S. Hrg. 99-812 Pt 1

REPORT OF THE SENATE IMPEACHMENT TRIAL COMMITTEE

HEARINGS

BEFORE THE

SENATE IMPEACHMENT TRIAL COMMITTEE
UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

AUGUST 15, 1986

ORGANIZATIONAL MEETING OF THE SENATE IMPEACHMENT TRIAL COMMITTEE

SEPTEMBER 10 AND 15, 1986

MEETINGS ON PRETRIAL MOTIONS

SEPTEMBER 15, 16, 17, 18, AND 19, 1986

TESTIMONY OF WITNESSES

Part 1 of 4 Parts

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Senator Gore, Goody Marshall and Peter Sage Knight
Senator Bingaman, Faith Roessel and Edwin Jayne

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ORGANIZATION MEETING OF THE SENATE IMPEACHMENT TRIAL COMMITTEE

FRIDAY, AUGUST 15, 1986

U.S. SENATE,
SENATE IMPEACHMENT TRIAL COMMITTEE,
Washington, DC.

The committee met, pursuant to notice, at 9:08 a.m., in room SR-301 of the Russell Senate Office Building, Hon. Charles McC. Mathias, Jr., presiding.

Present: Senators Mathias, Hatch, Warner, Rudman, Pressler, McConnell, Heflin, DeConcini, Pryor, Sarbanes, Gore, and Bingaman.

Senator **MATHIAS**. Would the members come to the desk.

Each one of you has a folder before you. Since I called this meeting I might just say a word or two of explanation.

The Vice President appointed this committee yesterday pursuant to rule XI and the adoption of Senate Resolution 481.

99TH CONGRESS
2D SESSION

S. RES. 481

To provide for the appointment of a committee to receive and to report evidence with respect to articles of impeachment against Harry E. Claiborne.

IN THE SENATE OF THE UNITED STATES

AUGUST 14 (legislative day, AUGUST 11), 1986

Mr. DOLE (for himself and Mr. BYRD) submitted the following resolution; which was considered and agreed to

---

RESOLUTION

To provide for the appointment of a committee to receive and to report evidence with respect to articles of impeachment against Harry E. Claiborne.

Resolved, Pursuant to rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, the Presiding Officer shall appoint a committee of twelve Senators to perform the duties and to exercise the powers provided for in the rule.

SEC. 2. The Majority and Minority Leader shall each recommend six Members to the Presiding Officer for appointment to the committee.

SEC. 3. Necessary expenses of the committee shall be paid from the contingent fund of the Senate from the appropriation account "Miscellaneous Items" upon vouchers approved by the chairman of the committee.

SEC. 4. The committee shall be deemed to be a standing committee of the Senate for the purpose of printing reports, hearings, and other documents for submission to the Senate under rule XI.

SEC. 5. The Secretary shall notify the House of Representatives of this resolution.

This is to discharge the responsibilities imposed by article I, section 3 of the Constitution.

"The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the concurrence of two thirds of the Members present. Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of Honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to law."

As you all know, on June 26, 1986, the House Judiciary Committee voted to report four articles of impeachment for high crimes and misdemeanors on Harry E. Claiborne, judge of the U.S. district court for the District of Nevada. The House of Representatives unanimously agreed to these articles by adopting House Resolution 461, on July 22, 1986, and by agreeing to three subsequent resolutions appointing managers, instructing the House to inform the Senate of these impeachment articles, and authorizing the managers to prepare for and to conduct the impeachment trial.

[The text of H. Res. 461 follows:]

99TH CONGRESS
2D SESSION

H. RES. 461

IN THE SENATE OF THE UNITED STATES

AUGUST 6 (legislative day, AUGUST 4), 1986

Received

RESOLUTION

Impeaching Harry E. Claiborne, Judge of the United States District Court for the District of Nevada, of High Crimes and Misdemeanors

Resolved, That Harry E. Claiborne, a judge of the United States District Court for the District of Nevada, be impeached for misbehavior, and for high crimes and misdemeanors; that the evidence heretofore taken by a subcommittee of the Committee on the Judiciary of the House of Representatives sustains articles of impeachment, which are hereinafter set out; and that the articles be adopted by the House of Representatives and exhibited to the Senate:

Articles of Impeachment exhibited by the House of Representatives of the United States of America in the name of itself and all of the people of the United States of America, against Judge Harry E. Claiborne, a judge of the United States District Court for the District of Nevada, in maintenance and support of its impeachment against him for misbehavior and for high crimes and misdemeanors.

ARTICLE I

That Judge Harry E. Claiborne, having been nominated by the President of the United States, confirmed by the Senate of the United States, and while serving as a judge of the United States District Court for the District of Nevada, was and is guilty of misbehavior and of high crimes and misdemeanors in office in a manner and form as follows:

On or about June 15, 1980, Judge Harry E. Claiborne did willfully and knowingly make and subscribe a United States Individual Income Tax Return for the calendar year 1979, which return was verified by a written declaration that the return was made under penalties of perjury; which return was filed with the Internal Revenue Service; and which return Judge Harry E. Claiborne did not believe to be true and correct as to every material matter in that the return reported total income in the amount of $80,227.04 whereas, as he then and there well knew and believed, he received and failed to report substantial income in addition to that stated on the return in violation of section 7206(1) of title 26, United States Code.

The facts set forth in the foregoing paragraph were found beyond a reasonable doubt by a twelve-person jury in the United States District Court for the District of Nevada.

Wherefore, Judge Harry E. Claiborne was and is guilty of misbehavior and was and is guilty of a high crime and misdemeanor and, by such conduct, warrants impeachment and trial and removal from office.

ARTICLE II

That Judge Harry E. Claiborne, having been nominated by the President of the United States, confirmed by the Senate of the United States, and while serving as a judge of the United States District Court for the District of Nevada, was and is guilty of misbehavior and of high crimes and misdemeanors in office in a manner and form as follows:

On or about June 15, 1981, Judge Harry E. Claiborne did willfully and knowingly make and subscribe a United States Individual Income Tax Return for the calendar year 1980, which return was verified by a written declaration that the return was made under penalties of perjury; which return was filed with the Internal Revenue Service; and which return Judge Harry E. Claiborne did not believe to be true and correct as to every material matter in that the return reported total income in the amount of $54,251 whereas, as he then and there well knew and believed, he received and failed to report substantial income in addition to that stated on the return in violation of section 7206(1) of title 26, United States Code.

The facts set forth in the foregoing paragraph were found beyond a reasonable doubt by a twelve-person jury in the United States District Court for the District of Nevada.

Wherefore, Judge Harry E. Claiborne was and is guilty of misbehavior and was and is guilty of a high crime and misdemeanor and, by such conduct, warrants impeachment and trial and removal from office.

ARTICLE III

That Judge Harry E. Claiborne, having been nominated by the President of the United States, confirmed by the Senate of the United States, and while serving as a judge of the United States District Court for the District of Nevada, was and is guilty of misbehavior and of high crimes in office in a manner and form as follows:

On August 10, 1984, in the United States District Court for the District of Nevada, Judge Harry E. Claiborne was found guilty by a twelve-person jury of making and subscribing a false income tax return for the calendar years 1979 and 1980 in violation of section 7206(1) of title 26, United State Code.

Thereafter, a judgment of conviction was entered against Judge Harry E. Claiborne for each of the violations of section 7206(1) of title 26, United States Code, and a sentence of two years imprisonment for each violation was imposed, to be served concurrently, together with a fine of $5000 for each violation.

Wherefore, Judge Harry E. Claiborne was and is guilty of misbehavior and was and is guilty of high crimes.

ARTICLE IV

That Judge Harry E. Claiborne, having been nominated by the President of the United States, confirmed by the Senate of the United States, and while serving as a judge of the United States District Court for the District of Nevada, was and is guilty of misbehavior and of misdemeanors in office in a manner and form as follows:

Judge Harry E. Claiborne took the oath for the office of judge of the United States and is required to discharge and perform all the duties incumbent on him and to uphold and obey the Constitution and laws of the United States.

Judge Harry E. Claiborne, by virtue of his office, is required to uphold the integrity of the judiciary and to perform the duties of his office impartially.

Judge Harry E. Claiborne, by willfully and knowingly falsifying his income on his Federal tax returns for 1979 and 1980, has betrayed the trust of the people of the United States and reduced confidence in the integrity and impartiality of the judiciary, thereby bringing disrepute on the Federal courts and the administration of justice by the courts.

Wherefore, Judge Harry E. Claiborne was and is guilty of misbehavior and was and is guilty of misdemeanors and, by such conduct, warrants impeachment and trial and removal from office.

Speaker of the House of Representatives.

Attest: BENJAMIN J. GUTHRIE,
Clerk.

The House has now so informed the Senate; the House managers have exhibited the articles of impeachment to the Senate; and the Senate has convened an impeachment court. In addition, Senators have been duly sworn and a summons (S. Res. 480) has been issued to the impeached person.

[The text of S. Res. 480 follows:]

99TH CONGRESS
2D SESSION

S. RES. 480

To provide for issuance of a summons and for related procedures concerning the articles of impeachment against Harry E. Claiborne.

IN THE SENATE OF THE UNITED STATES

AUGUST 14 (legislative day, AUGUST 11), 1986

Mr. DOLE (for himself and Mr. BYRD) submitted the following resolution; which was considered and agreed to

---

RESOLUTION

To provide for issuance of a summons and for related procedures concerning the articles of impeachment against Harry E. Claiborne.

Resolved, A summons shall be issued which commands Harry E. Claiborne to file with the Secretary of the Senate an answer to the articles of impeachment no later than September 8, 1986, and thereafter to abide by, obey, and perform such orders, directions, and judgments as the Senate shall make in the premises, according to the Constitution and laws of the United States.

SEC. 2. The Sergeant at Arms is authorized to utilize the services of the Deputy Sergeant at Arms or another employee of the Senate in serving the summons.

SEC. 3. The Secretary shall notify the House of Representatives of the filing of the answer and shall provide a copy of the answer to the House.

SEC. 4. The Managers on the part of the House may file with the Secretary of the Senate a replication no later than September 15, 1986.

SEC. 5. The Secretary shall notify counsel for Harry E. Claiborne of the filing of a replication, and shall provide counsel with a copy.

SEC. 6. The Secretary shall provide the answer and the replication, if any, to the Presiding Officer of the Senate on the first day the Senate is in session after the Secretary receives them, and the Presiding Officer shall cause the answer and replication, if any, to be printed in the Senate Journal and in the Congressional Record. If a timely answer has not been filed the Presiding Officer shall cause a plea of not guilty to be entered.

SEC. 7. The provisions of this resolution shall govern notwithstanding any provisions to the contrary in the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials.

SEC. 8. The Secretary shall notify the House of Representatives of this resolution.

Subsequent to these actions, on August 14, 1986, the Senate agreed to Senate Res. 481, providing for the appointment of a committee to receive and to report evidence with respect to articles of impeachment against Harry E. Claiborne. You have before you the agenda for this morning's meeting. These are the immediate tasks facing the committee, and I would appreciate any thoughts or suggestions which you may have at this point.

STATEMENT OF SENATOR CHARLES McC. MATHIAS, JR.
AT THE ORGANIZATIONAL MEETING OF THE
SENATE IMPEACHMENT COMMITTEE ON AUGUST 15, 1986

(Regarding the Impeachment Trial of
Federal Judge Harry E. Claiborne of Nevada)

This morning we meet to organize a committee appointed by the Presiding Officer of the Senate pursuant to Rule XI of the Rules of Procedure and Practice in the Senate when sitting on Impeachment Trials of civil officers of the United States government. This solemn responsibility is assigned to the Senate in Article I, Section 3, Clauses 6 and 7 of the Constitution. I think it important to read in full the words of these two clauses:

> "The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.
>
> "Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust, or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment, and Punishment, according to Law."

On June 26, 1986, the House Judiciary Committee voted to report four articles of impeachment for high crimes and misdemeanors on Harry E. Claiborne, Judge of the United States District Court for the District of Nevada. The House of Representatives unanimously agreed to these articles by adopting H. Res. 461, on July 22, 1986, and by agreeing to three subsequent resolutions appointing managers, instructing the House to inform the Senate of these impeachment articles, and authorizing the Managers to prepare for and to conduct the impeachment trial. The House has now so informed the Senate; the House Managers have exhibited the Articles of Impeachment to the Senate; and the Senate has convened an impeachment court. In addition, Senators have been duly sworn and a summons has been issued to the impeached person.

Subsequent to these actions, on August 14, 1986, the Senate agreed to S. Res. 481, providing for the appointment of a committee to receive and to report evidence with respect to articles of impeachment against Harry E. Claiborne. You have before you the agenda for this morning's meeting. These are the initial tasks facing this committee, and I would now open the meeting for your thoughts and reactions to the questions before us.

The committee agenda calls not unexpectedly for the first step to be to organize this committee to take evidence, and to elect a chairman and vice chairman, and that the committee designate staff for the purpose of conducting its work.

CHARLES McC. MATHIAS, JR., MARYLAND, CHAIRMAN
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JAMES A. McCLURE, IDAHO
JESSE HELMS, NORTH CAROLINA
JOHN W. WARNER, VIRGINIA
ROBERT DOLE, KANSAS
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United States Senate
COMMITTEE ON
RULES AND ADMINISTRATION
WASHINGTON, DC 20510

August 15, 1986

To: Members of the Senate Impeachment Committee

From: Senator Charles McC. Mathias, Jr.

Subject: Agenda for the Organizational Meeting of the Committee Appointed by the Presiding Officer of the Senate pursuant to Rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials

I. Organization of the Committee; election of a Chairman and a Vice Chairman (the two Leaders expressed their desire, during the consideration of of the measure authorizing this committee--Senate Resolution 481--that the committee select a Vice Chairman who is not a member of the party of the Chairman); designation of staff for the committee.

II. Consideration of Rules and Procedures for the Committee. Rule XI states, in the first clause of the second paragraph: "Unless otherwise ordered by the Senate, the rules of procedure and practice in the Senate when sitting on impeachment trials shall govern the procedure and practice of the committee so appointed." When these rules are silent on an issue or other matter, the Senate has ruled that Senate legislative rules are applicable.

III. Establish the work of the Committee. The first clause of Rule XI provides: "That in the trial of any impeachment the Presiding Officer of the Senate, upon the order of the Senate, shall appoint a committee of twelve Senators to receive evidence and take testimony at such times and places as the committee may determine...". Paragraph two of Rule XI states, in the second sentence: "The committee so appointed shall report to the Senate in writing a certified copy of the transcript of the proceedings and testimony had and given before such committee."

IV. Determine the time frame for the activities of the committee. Senate Resolution 480, agreed to by the Senate on August 14, 1986, provides that the impeached person shall file with the Secretary of the Senate an answer to the articles of impeachment no later than September 8, 1986; Senate Resolution 480 further provides that "The Managers on the part of the House may file with the Secretary of the Senate a replication [reply to the impeached person's answers to the articles of impeachment] no later than September 15, 1986.

V. Prepare and send letters to the House Managers and the Counsel for the Impeached Person stipulating the necessity for pre-trial statements from them by a date certain in order for the committee to perform its work in an expeditious manner.

Senator **Gore**. I would move that Senator Mathias be the chairman of the committee and that Senator Sarbanes be the vice chairman.

Senator **DeConcini**. Second.

Senator **Mathias**. Is there any discussion?

Senator **Hatch**. I move the question.

Senator **Rudman**. By acclamation.

Senator **Mathias**. Senator Pressler asked me last night what would be the name of the committee. The best I can come up with is the Filter Committee so we will filter the evidence for the Senate.

If that is the rule of the committee, I turn to the second item on the agenda which is consideration of the rules of procedures. Rule XI, in the first clause of the second paragraph states: "Unless otherwise ordered by the Senate, the rules of procedure and practice in the Senate when sitting on impeachment trials shall govern the procedure and practice of the committee so appointed." When these rules are silent on an issue or other matter, the Senate has ruled that Senate legislative rules are applicable.

Is there any discussion as to rules?

Judge Heflin, you have more experience with the courts than most of us.

Senator **Heflin**. Not having read these rules recently, I am not familiar with the nuances, so I guess that is all right. Rules can be waived and unanimous consent can accomplish a lot. Fine with me.

Senator **Mathias**. Attorney General Rudman.

Senator **Rudman**. Mr. Chairman, I looked these over last night and it seems to me that the basic problem we are going to have, if we have one at all, is in terms of the admissibility of evidence. I think the 1974 procedure and guidelines for impeachment trials of the Senate which were prepared by Appellant Attorney Gregory(?) and the 1974 amendment of the rules done by the Rules Committee probably gives us pretty good guidelines. I get the general impression, although there are some specific kinds of exclusions contained in here in this 1974 report by Parliamentarian Riddick pertaining to leading questions, ruling them out and so forth, generally speaking we probably have a fairly open set of guidelines that apply to us that would not be the historic guidelines to apply to a court.

I would think we ought to have the chairman adequately briefed by staff on these rules, and I expect the major number of rulings that the Chair would be called upon to make would be rulings of the admissibility of evidence.

Senator **Mathias**. Senator DeConcini.

Senator **DeConcini**. Mr. Chairman I am not familiar with the rules but a couple of things immediately come to my attention, and one is the necessity for a quorum. I wonder if we ought to consider less than an actual quorum which would be seven to get administrative work accomplished.

Second, the rules I am told by my staff require the questions to be in writing. I think we ought to consider the rules that would permit oral questions.

Senator **Mathias**. We have the Senate counsel here somewhere. Mike, what is the general rule of a quorum?

Mr. **Davidson**. The committee could agree to and publish rules which might permit a quorum as little as one to take evidence, but it was the view of the leadership when the leadership met to agree to submit a resolution that this should be a high court.

The purpose of the committee is to hear the evidence.

There was some discussion of a quorum of seven at the time. I don't know if that was intended to be binding upon the committee in the view that was discussed. Considering the importance of a substantial number of committee members actually hearing the evidence, because of the possibility that the Senate may always need a transcript of that, the committee might very well wish to consider not utilizing the ordinary legislative quorum which might be reduced to as little as one for the hearing of the testimony, but a quorum to assure that, at least in the committee, there were a substantial number of members who did directly hear the testimony presented to them.

Senator **Sarbanes**. Mr. Chairman, I think the Senate has delegated it to the committee. I am not sure if I were counsel for the defendant I wouldn't assert that the Senate itself have the hearing; but coming down to the committee, the committee should in effect have an active quorum. It is going to be a short period although rather intense. We intend to do our work over a 3-week period, 2½ weeks.

Senator **Mathias**. I hope basically the work of this committee—I hope—can be compressed into that week of the 15th of September. The following week, it would be necessary to print the report and then go to the full Senate the week after that.

Senator **Sarbanes**. The other point that I think we also have to be concerned with, is in respect to how the trial appears. I think in that sense, a natural quorum would be helpful.

Senator **Mathias**. If I can inject here, Judge, I think since this is a novel proceeding and it has never been done before, we can anticipate that there are going to be some serious questions raised and possibly in a constitutional test, so we need to be exceedingly prudent.

Senator **Rudman**. Mr. Chairman, I think one thing we have to keep in mind is that we are not making a recommendation, and that is very key, of course, and the reason that was done was to assure any constitutional challenge would fail.

I agree with both Senators from Maryland that we really have to make an effort to have a very large number of members with a high number for a quorum for a whole lot of reasons. Although we are not making a recommendation, to some extent we are going to tell our colleagues in the Senate what evidence we think is important for them to consider, that they will get some sort of transcript and I assume some sort of report, but nevertheless it could be said that the committee was not diligent in its duties, so I would hope we could schedule in a way so that we would have a high quorum number and everyone attend most of the sessions.

Mr. **Heflin**. Mr. Chairman, the first time 3 or 4 minutes ago was the first time I had seen any of these rules and had a chance to look and study anything about this. So what I am fixing to say is from other experience.

We have had, of course, in the Senate matters pertaining to the expulsion of a Member, Senator Harrison Williams, and in some degree there is some similarity. The Ethics Committee took testimony and then presented a transcript to the full committee, so there may be some similarity between what was the procedure followed there.

In a number of instances, the special counsel that was in the Ethics Committee and the counsel for Senator Williams agreed on a number of things. I am not sure whether all of these agreed or not, but there is another similarity. In the *Williams* case, there had been a criminal trial in advance of the expulsion hearing before the Ethics Committee. I don't know whether by agreement—I believe by agreement but I am not positive—but the transcript of the record in the criminal case was introduced into evidence which, therefore, reduced the number of actual witnesses that came before the Ethics Committee and testified.

Senator Williams had the right to present any witness that he wanted to as a live witness. He had the right to introduce any documentary evidence that he wanted to in addition to the transcript and as a result of that, it reduced the amount of time that the committee had to spend. We spent a good deal of time, weeks and weeks, but in comparison to the previous ethics matter in which Senator Talmadge was involved, some of you who were here then can remember that committee almost meeting daily, daily, for months and months and months taking original testimony.

So, I would suggest that, one, if Mr. Davidson is going to be our counsel that there be an exploration as to what could be done perhaps by agreement. I have heard former Senator Cannon would represent Judge Claiborne, and it could well be that by pursuing some discussion that the issues could be narrowed and there could be some saving of time.

On the other hand, it may well be that a review of what went on in some of the ethics matters might be helpful to us in making some determination of those matters.

Senator MATHIAS. Senator Hatch.

Senator HATCH. Mr. Chairman, the House Ethics Committee, by the way, that is what they did.

First of all, I think under the rules of evidence we would follow the Senate rules and not the Federal rules on integrity matters. We will have to follow the Federal Rules of Evidence with regard to the trial itself in the Senate.

Senator RUDMAN. I don't think that is correct.

Senator HATCH. I will stand corrected.

Mr. DAVIDSON. There was a proposal in 1974, I think, by Senator Mansfield, but that proposal was not agreed to. There was no impeachment trial. It was not even part of the committee's rule changes in 1974.

Senator HATCH. I think the committee can do pretty well whatever it wants to do, but they recommended following the Federal rules which I think would probably be a pretty good approach to take with something as important as this. I don't think it makes much difference one way or the other. I think we have the power to do whatever we want to do under the Senate rules.

Second, I think we should have a national forum.

Third, in the House, what they did was they brought in a member of the Justice Department to present the case, a very simple procedure. They brought him in to present the case, I presume he presented transcripts, and then they brought in witnesses to basically discuss the rules of the House and to talk about what they should do and then they allowed the defense lawyer for Judge Claiborne to present his case. I don't know that we have to do much more than that. I think we can take some solace in the fact that that is the way they did it. We may want to broaden it but it seems to me that would be a good procedure to follow.

Senator MATHIAS. Mr. Pressler.

Senator PRESSLER. Isn't there some rule that every Senator must hear the evidence?

The stumbling block it seems to be every senator on this committee has to be here at all times to hear all of the evidence. Isn't there something in here somewhere that says every Senator must hear all the evidence?

Mr. DAVIDSON. No.

Senator MATHIAS. Could I interject a point here just so everyone is clear where we are on the rules, the 1974 rules, the so-called Doctor Riddick rules have not yet been adopted by the Senate. They have been before the Rules Committee and I would anticipate that they would be adopted without any controversy in the Senate sometime within the next 24 hours.

I think we could pretty well account that they would be the operating rules.

Senator Gore.

Senator GORE. Mr. Chairman, only two questions.

First of all, I feel strongly we should not be bound by the Federal Rules of Evidence. I don't think we should be. I don't think the Constitution assumes that we are going to have to follow procedures of that kind. I think it is up to us to establish what rules of evidence we use consistent with our mandate to be fair to the defendant and to get the job done.

Second, I think we should accept the suggestion of the managers from the House in asking for a pretrial conference. In doing so, I would suggest that at our discretion we follow those portions of rule 16 of the Federal Rules of Civil Procedure not as a requirement but as a guide to structuring the pretrial conference in order to try to get stipulations, in order to get agreement from the managers and the counsel for the defendant—the impeached officer—on procedure and the presentation of evidence, and the like.

I would recommend that such a pretrial conference take place as soon as possible after the Senate receives the response from Judge Claiborne.

Senator MATHIAS. I think that is a thoughtful suggestion on Senator Gore's part.

Let me read a line or two from rule 16 which I think is the pertinent part, so everybody is refreshed.

It provides for the formulation and simplification of the issues with the possibility of obtaining admissions of fact documents which will avoid unnecessary proof and questions regarding the authenticity of documents and advance rulings of the court on the admissibility of evidence—the avoidance of unnecessary proof of cumulative evidence and documents, and so forth.

Senator BINGAMAN. Mr. Chairman, maybe this is clear to everybody or maybe Mike can just clarify it for me. This is a civil proceeding that we are doing. This is not a criminal trial. Is that right?

Mr. **Davidson**. The Senate has never felt itself bound by the rules of criminal procedure.

Senator **Bingaman**. We are not imposing a criminal penalty so, therefore, it is in the nature of a civil proceeding of some kind for determining whether or not to remove him from office?

Mr. **Davidson**. The sanctions go no further than removal from office and disqualification to hold any other office.

Senator **Bingaman**. Is it clear that he is entitled to a de novo proceeding? The reason we are doing this and taking evidence is that the other proceeding was a criminal proceeding in the Federal court, and this would be a separate evidentiary hearing that relates to this civil aspect of it. Is that right or not?

Mr. **Davidson**. I am sure the House will contend that the Senate should give either great weight or conclusive authority to the judgment of the convictions. Against that, the Senate may consider some of the early documents and writings about the impeachment clause which indicate that the framers did conceive a double trial, two separate systems reaching independent judgments and making separate constitutional conclusions within their respective authorities.

The Senate may conclude that the transcript of the criminal proceedings, as indeed the transcript with respect to the expulsion of a member, may be an authoritative gathering of the evidence as relates to the issues before the court. It may conclude that a study of the transcript is sufficient to determine the weight to be given to the conviction, but the accused may have other grounds. The committee and the Senate may decide there is sufficient or not sufficient grounds in law but he may have other grounds which he did not think he had an opportunity to present to the criminal trial.

But it is a separate proceeding and the framers did understand that there was a certain degree of constitutional inefficiency about it, but that it served other constitutional values to assure that either the judgment of the Senate committee that the impeachment trial would be not be binding on the courts or the judgments of the courts would not be binding on the Senate.

Senator **Mathias**. It was clear there would not be double jeopardy involved here.

Senator **Heflin**. Usually the distinction is the proof beyond a reasonable doubt. In a civil proceedings, it is either preponderance or clear convincing or whatever your standard of proof may be. It is less than the criminal case as a general rule.

Senator **Mathias**. Senator Rudman.

Senator **Rudman**. Mr. Chairman, just a comment here on the constitutional question of high crimes and misbehavior. Misbehavior is whatever a group of 100 Senators say is an impeachment trial.

I would like to talk about the procedures for just a moment. I think one of the things, Mr. Chairman—we can't decide it today—we ought to be thinking about it today is just how this forum is going to operate. This is not a traditional congressional committee where we have 5 minutes. We could do that. We have 12 lawyers here, I dare say 12 very good lawyers, and you could have a very interesting situation here where everybody wants to cross-examine every witness.

I am not asking anyone to agree or disagree, but we are sitting almost like an investigative grand jury that will not report a finding but will report evidence to a court. We have a chairman who sits actually almost as a foreman of that. In a criminal proceeding each of the grand jurors can ask quesitons, and anyone who has served on a grand jury knows that. In most cases, they don't unless someone has a burning question.

I guess the thing that I am trying to say, Mr. Chairman, is that we ought to come to some agreement amongst ourselves as to whether we are going to sit and listen to evidence or are we all going to be active inquisitors in this proceeding. I dare say, if we are going to do that, this is going to be a lot longer than a week.

I have looked at some of the records overnight that I asked the Senate legal counsel for when this great honor was bestowed on us yesterday on the floor of the Senate. I have read through it, and I would say there are a lot of issues here that a lot of us are going to want to ask questions about.

The second point I would like to make, Mr. Chairman, is one I think the Senate counsel kind of alluded to it in his remarks. There is a motion pending before the District Court in Nevada entitled "Defendant's Motion for a New Trial Based on Newly Discovered Evidence," and it deals with a very interesting matter which I think we ought to have briefed by Senate legal counsel over this period of time. It has to do with an *Ellsberg/*type of defense. The allegation is that FBI agents broke into Judge Claiborne's home and got the evidence that he was eventually convicted on.

Now if that is true, you can probably say, so what, in the sense that the exclusionary rule—that is why I was addressing that to the Senator from Utah. We can either observe the exclusionary rule or we don't have to observe the exclusionary rule. We are dealing with misbehavior. We are not dealing with a criminal case. I would say that is going to take a major amount of our time, based on what I have read.

I would hope, Mr. Chairman, the Senate Legal Counsel could do some sort of brief for us to give us some view on how that impinges on what we are doing. I have my own views, but I will keep that in private. I hope that will be done because I think we will hear a lot about that when we come back on the 15th.

Senator **Mathias**. Senator Pryor.

Senator **Pryor**. I went through with Judge Heflin a year, I guess, on the Williams matter, Senator Williams on the Ethics Committee. It was an excruciating period, I might remind all my colleagues. We reached a point in that that I hope we don't reach here.

It always troubled me about the Williams matter in as much and the judge may want to correct me—I think in recalling that we reached the point where his counsel, that he wanted to actually bring to the floor of the Senate, was not allowed to come on the Senate floor to defend and to make the case for the then Senator Williams. I think I am correct in saying that. I don't know whether this was a rule of the Senate. I don't know exactly whether it was a rule that we adopted in the committee on procedure or what, but are we certain that he can have his counsel in the Senate Chamber to make his case for him? There is no problem with that that I know of.

Senator **Mathias**. We are operating under a different set of provisions of the Constitution. That was under the discipline of a Member. This under the impeachment proceeding, and I think that Senate precedence very clearly lays out that a case can be made in the full Senate with counsel.

Senator Warner.

Senator **Warner**. Do I understand from Senator Rudman's observations that there is a parallel proceeding going on now in the original case in the nature of a motion for a new trial predicated on the exclusionary rule?

I ask this hypothetical question: If the Senate were to proceed and conclude its proceeding and thereafter the Federal court system orders a new trial and subsequently he would be adjudged not guilty, are we high and dry on that?

Mr. **Davidson**. No.

Senator **Warner**. There would be some confusion in the mind of the public, would there not?

Senator **DeConcini**. Mr. Chairman, as I understand it, we are independent. We are judging the misbehavior of a sitting Federal judge. We could do this had he not been convicted of anything. We could pick a judge in some State and decide that that judge might have misbehaved, and if the House so acted, we would be sitting here regardless of any criminal proceeedings——

Senator **Mathias**. Whether he was convicted criminally or not——

Senator **DeConcini** [continuing]. If that case is thrown out, we are in the position where the House is so moved to ask us to try the case, we can go ahead.

Senator **Gore**. Mr. Chairman, on that same point, the only way that could happen would be if the court decided the exclusionary rule applied to the evidence instrumental in his criminal conviction and that the interests of the public in deterring police departments from invading civil liberties took precedence over the need to convict this particular defendant of criminal activity. That rule and the public policy upon which it is based should not, I would argue, apply to an impeachment if only for the reason that impeachment proceedings are so rare that it is difficult to imagine a growing abuse of the kinds contemplated by the exclusionary rule in the courts, justifying the voiding of an impeachment procedure upon the public policy grounds embodied in the exclusionary rule. So I don't think we should be greatly troubled by the parallel procedure.

Senator **DeConcini**. If the Senator will yield, I will agree with the Senator. Unfortunately for me, and others may disagree, these two institutions only seem to act on impeachment based on criminal conviction and that is unfortunate, because we have had a number of Federal judges who, in my judgment, ought to have been considered to be removed and it never happened.

Senator **Mathias**. I have known of one or two like that, too.

Senator **Heflin**. On the exclusionary rule, the procedures relative to civil matters have been, I think, Senator Gore is getting to the point it is not applicable to public policy reason for it is not there, but we had the similar thing there in the Williams matter. We had the matter pertaining to entrapment, we had other matters that were issues, and what it largely came down to was a decision by each individual Senator in his vote as to whether or not he wanted to let that be an element in his consideration of guilty or not guilty rather than that of our adopting some rule that would be, I would assume, that his counsel would argue an unlawful search and seizure and, on the other hand, our counsel would argue that it is not applicable, the exclusionary rule is not applicable to the thing, to the impeachment proceeding, and it really comes down to an individual evaluation for each Senator in his vote as to whether or not he will not give credit or give credence to the concept of the exclusionary rule.

Senator **Mathias**. Senator Hatch.

Senator **Hatch**. Let me just make a suggestion on staff. We each have a member of our own staff, but I do think we need to hire an investigator or two to help put this all together. We could have some investigators in the Senate who are capable of doing this transferred to this committee. I think we do have to make sure we have some very competent full-time people working on this. That is surely something we want to take care of. Make sure it is buttoned down and, in addition to the Senate Legal Counsel, we ought to have someone like Judge Wiggins to advise us who is a constitutional authority.

Senator **Mathias**. If anybody is interested in the historical background, I just happen to have in my office a complete edition of "State Trials and Proceedings" upon high treason and other crimes and misdemeanors during the reign of King Richard II, to the end of the reign of King George I.

Senator **Rudman**. Mr. Chairman, can I have that as precedent for a ruling?

Senator **Mathias**. These are the bills of indictment passed in the House of Commons and held in the House of Lords.

Senator **Pryor**. Is that in paperback yet?

Senator **Mathias**. I just want you all to be fully aware of the precedents available to the committee.

Senator **Heflin**. Mr. Chairman, it seems to me like we have more than a pretrial conference. The support staff that we have including what committees and where they will be furnished from and how that sort of thing is an issue, and certainly—at least we did in ethics have special counsel or some counsel Mr. Davidson is going to serve, however what decision is made on those, I would frankly think that a great number of these things are going to have to be determined, and then the other thing is whether or not as I was told we might have to meet during the recess. If so, I am sure the other members would like to know when.

I would suggest that the committee delegate to the chairman and the vice chairman considerable discretion relative to the matters of counsel, support staff, any of the details that the chairman and the vice chairman may need to have to do in this matter and let you all go ahead and meet, and we can confirm it after a meeting. I just think the two of you are going to have to in effect meet and meet frequently and make decisions on a lot of matters like this.

I, therefore, move that you be given full power to determine the details with a report back that we can confirm.

Senator **Mathias**. I appreciate that generous motion but perhaps before we act on it, we need a little more guidance.

Mike, did you want to make some summary comment at this point?

Mr. **Davidson**. Yes, I think it is consistent with a number of thoughts. This is a matter which is different from a legislative inquiry where the Senate conducts an investigation, searches out the evidence itself, and perhaps even different than in the Ethics Committee where we also had an active investigator. This is a proceeding in which there are two parties, each of which has conducted an investigation and each of which is prepared to come before the court, a committee of the court, to present evidence which they require. So the task of investigating which is the normal task is not necessarily the task for this body. This body receives evidence which others wish to present to it.

At this point, we may have an idea from——

Senator **Sarbanes**. May I interrupt you on that point?

Mr. **Davidson**. Yes, sir.

Senator **Sarbanes**. Would it in fact be improper for this body to undertake to seek evidence on the analogy that that is the job of counsel and the House Members are prosecuting this case and they are presenting it to us. Judge Claiborne's attorney was defending this as it was presented to us.

Mr. **Davidson**. In the past, from all that I gather, the Senate has not conducted a separate investigation to weigh the evidence presented to it. It has not gone beyond the Articles of Impeachment to find other impeachable offenses. It considers the charges brought by the House, the evidence the House brings to it, and the evidence the defendant brings to rebut that case.

Senator **Pressler**. In other words, we are to hear the evidence from the House Members, not to hear from Judge Claiborne's lawyers?

Mr. **Davidson**. No, both sides but the House would sustain its Articles of Impeachment.

Senator **Mathias**. And the interrogation is done by the managers on the part of the House.

Mr. **Davidson**. Done by the managers of the House and by Judge Claiborne's counsel. His counsel participates at all phases. It is guaranteed by the rulings to have the right to examine witnesses.

Senator **Gore**. Just as a judge also has a right to put questions, so should we.

Mr. **Davidson**. Yes, and the rules so provide.

Senator **Mathias**. The burden of the examination will fall upon counsel on each side.

Mr. **Davidson**. Yes.

Senator **Bingaman**. Are we limited in the relief we grant or the decision we come to? Has the Senate asked that he be kept from holding any other public office or are they just asking that he be removed?

Mr. **Davidson**. They only state that his misbehavior warrants trial and removal from office. My understanding is it is worth a good second look. The Senate may independently go to the next question of whether to disqualify the officer as a very good part of its judgment.

Taking this picture of the Senate as a court, although we may have an idea from proceedings in the trial court, those trial proceedings and discussions that occur publicly, what the defenses might be and what the theory of the prosecution might be, I would think that there is a good deal of wisdom in the approach which, let's say, to call upon the parties to come forward and tell the committee what each intends to prove and how each intends to prove it in the nature of a pretrial submission. It may very well be that the exclusionary rule issue is an issue, but it also has not yet been formally tendered by Judge Claiborne. He may articulate it in a particular way and require particular consideration.

Perhaps an efficient use of the committee's time during the recess or the general time of all parties would be if the chairman and vice chairman with the authority of the committee issued a directive to the managers and counsel for the respondent to provide statements during the course of the recess, perhaps in sequence, the managers first and Mr. Claiborne following as to what each intends to prove and how they intend to prove it, the witnesses they would call, the exhibits they would use and asking them to meet and agree to stipulate exhibits. That could be done and then to appear before the committee——

Senator **Mathias**. This is item No. 4 on the agenda.

Mr. **Davidson**. Let me explain No. 4.

No. 4 involves a formal process of an answer and a replication of the answer will generally be in the nature of a denial that they raise some defenses.

I was suggesting something more along the lines of Senator Gore's statement about a pretrial conference and pretrial procedures.

The Senate had actually a more accelerated schedule in mind than the House. The House came in and asked for the additional time, but those formal documents need not delay the actual preparation of the case.

There is no surprise to anyone. Everyone has known the issues and I am sure both sides are well along the way in preparing how they propose to do this.

Senator **Mathias**. I would say if we could set aside the Heflin motion for a moment, we might move the adoption of agenda item 4 to conform the committee schedule with that of the Senate's.

Senator **Rudman**. I so move.

Senator **DeConcini**. Second.

Senator **Mathias**. Without objection, the motion is agreed.

Mr. **Davidson**. Does that include No. 5 with respect to pretrial?

Senator **Mathias**. I will make the same suggestion with respect to 5.

Senator **Rudman**. I so move.

Senator **Mathias**. Without objection, agenda item No. 5 is agreed to.

Now we revert to this Heflin motion which is that the staff each has his own responsibilities here and I would suggest each one designate and advise the Rules Committee before you leave town of your staff designee who will represent you and who will be your contact point on your own staff.

Senator **Heflin**. It may well be you will have to look into it. For example, some of us might want to use Judiciary Committee staff. There are some problems with the staff outside of committee work. I just think there are some things that need to be looked into.

Senator **Mathias**. I agree with that, and I would say if there are problems of that sort and the Rules Committee is trying to discipline that so you don't have just a loose assignment of people, but this is such a unique proceeding I think we could get some special dispensation from the Rules Committee on that because this is once in 50 years. I think we can provide some special arrangements on that.

The second question about counsel, Mike and I have talked very frankly about this counsel question, whether we do need some outside counsel. I guess that is within the purview of the Heflin motion, but I would be glad to hear from you on that question.

Senator **Rudman**. Mr. Chairman, I have no idea that the workload is on the Senate Counsel so what I am about to stay is oblivious to that. I have had extensive experience with the Senate legal counsel this past year, and I wil tell you that they are first-rate and competent, and they are as good as I have found. If we could possibly use them, that would be my preference.

Senator **Sarbanes**. I think we should survey the resources that are available to us in terms of staff and demands on others and make a judgement as to whether how we think we can meet the workload.

Senator **Heflin**. My motion would give that to the chairman and the vice chairman to make the decision.

Senator **Mathias**. If that is the will of the committee, we will take that on and we will consult with Senate Legal Counsel. I share Senator Rudman's high regard for Senate Counsel.

There is one final question that relates to the physical arrangements and that is where do you want to meet?

Senator **Heflin**. Right here.

Senator **Mathias**. The other possiblity that occurs to me is the caucus room.

Senator **Rudman**. Mr. Chairman, I don't think this room will be big enough.

Senator **Bingaman**. I so move.

Senator **Mathias**. You are going to have to have a defense table and a prosecution table, in effect. You are going to need space for all of that, and I don't know how many managers of the House will actually attend on a regular basis and I don't know what the defense team will be, but I think we have a space problem in this room.

Senator **Rudman**. I think every law student in the area would want to attend.

Senator **Mathias**. If that can be within the purview of your motion——

Senator **Heflin**. I would give you full and complete and full plenary powers that can be delegated.

Senator **Mathias**. I just raised it.

Senator HELFIN. You have full plenary powers and we confirm you.

Senator SARBANES. Can I ask a question on the rules. As I understand it, the revised rules for impeachment were reported by the committee but not adopted by the Senate; is that correct?

Senator MATHIAS. We anticipate they will be adopted if not today then in the very near future.

Senator SARBANES. I guess that is the question to be put.

Senator HEFLIN. Today would be preferable.

Senator SARBANES. If members feel they have reviewed them and they are satisfied with them and the other question is whether we review them and adopt them when they come back.

Senator DECONCINI. These are the rules the Rules Committee reported out. The full Senate will either take or not take the Rules Committee recommendation.

Senator MATHIAS. These rulings were actually prepared in 1974 by Dr. Riddick as a general matter, but because the matter lost interest in 1974 in the course of events, they simply were never acted on so we acted on them within the last week in the Rules Committee and they are now pending in the Senate.

Senator SARBANES. Is there an urgency to adopt them before the recess or can we do it when we come back and that will give us a chance to look at them. I have a little concern because we are not acting as the impeachment court in this committee, as I understand it. In effect, the process is being split. We are serving a purpose, as it were, organizing and framing to present it to the Senate. Is that not correct?

Senator MATHIAS. That is correct.

Senator SARBANES. So we are not going to make a judgment here.

Senator MATHIAS. We don't even make a recommendation.

Senator GORE. If we are not to make a recomendation, are we to characterize the evidence?

Senator MATHIAS. I think we are really just to filter the evidence.

Senator HEFLIN. Would you characterize the word "characterize."

Senator PRYOR. To expand on Senator Bingaman's question a moment ago, and I don't remember how he phrased this question, what would happen if Judge Claiborne might resign? Would we disband or we have any juridiction? Where we would go if that happened?

Senator MATHIAS. I think we would salute him for having done his duty and go about our own business.

Mr. DAVIDSON. That happened in 1926.

Senator MATHIAS. That is the only purpose for which this impeachment process exists to consider removal. If the official removes himself, in effect, that is actually what happened in 1974. Once the President resigned, the issue was gone.

Are we ready for the Heflin motion?

Senator HEFLIN. I so move.

[The motion was seconded.]

Senator MATHIAS. All in favor of the motion say, "Aye." [chorus of ayes]. Opposed, "No." [No response.]

The Heflin motion is adopted.

I suppose, gentleman, that is about as far as we can go today.

[The committee was adjourned at 10:05 a.m., to reconvene subject to the call of the Chair.]

SUBSEQUENT COMMITTEE ACTIONS AND RESPONSES

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WASHINGTON, DC 20510

MEMORANDUM

To: Members
Committee Under Impeachment Rule XI

From: Michael Davidson

Date: August 15, 1986

Enclosed is a copy of the letter which Chairman Mathias and Vice Chairman Sarbanes have sent to the House Managers and counsel for Judge Claiborne establishing pretrial procedures.

Enc.

United States Senate
WASHINGTON, DC 20510

August 15, 1986

The Honorable Peter W. Rodino, Jr.
The House of Representatives
Washington, D.C. 20515

The Honorable Hamilton Fish, Jr.
The House of Representatives
Washington, D.C. 20515

The Honorable Howard W. Cannon
Law Office
499 South Capitol Street, S.W., Suite 400
Washington, D.C. 20003

Mr. Oscar B. Goodman
Goodman, Terry, Stein & Quintana
520 South Fourth Street
Las Vegas, Nevada 89101-6593

Dear Messrs. Rodino, Fish, Cannon, and Goodman:

The committee which the Senate has appointed under Impeachment Rule XI held its organizational meeting today and agreed to ask the parties to submit pretrial statements in order to facilitate the orderly presentation of evidence to the committee.

Although the Senate has granted Judge Claiborne until September 8 to file a formal answer, and has granted the House until September 15 to file a replication, it is necessary to proceed immediately with a pretrial schedule in order to meet the objective, announced yesterday by the Majority Leader, that the committee receive evidence during the week of September 15. According to the announced schedule, the parties should be prepared to make their submissions to the full Senate on September 29 or as soon after as the Senate is able to hear them.

To achieve these objectives we are asking the Managers to file with us, and serve on counsel for Judge Claiborne, a pretrial statement by August 28. Counsel for Judge Claiborne should submit and serve their pretrial statement by September 4. The committee will meet prior to September 15 to discuss with the parties questions which may be presented by their statements.

The pretrial statements should describe with particularity what each party proposes to prove. They also should indicate how each party proposes to prove the major elements of that party's case. The statements should identify any witness whom the party proposes to call and should state what the party expects the testimony of the witness to be. Further, the statements should itemize and describe the documents which each party proposes to place in evidence. If the Managers conclude, after receiving Judge Claiborne's statement on September 4, that they should call other witnesses or introduce other documents to rebut Judge Claiborne's defense, they should submit a supplemental statement by September 8.

We encourage the Managers and counsel for Judge Claiborne to meet prior to September 8 to attempt to stipulate to facts and to documents and to report to us on that date on the success of their efforts.

While we do not anticipate extensive pretrial motion practice, the committee will consider motions which the parties wish to submit in advance of the presentation of evidence during the week beginning September 15. We ask that the parties file any such motions no later than September 8. We will discuss, at a meeting prior to September 15, how we should proceed to consider those motions.

Please submit an original and thirty copies of all statements and motions and provide for their delivery to Ann B. Cook, Clerk, Committee on Rules and Administration, 305 Russell Senate Office Building, Washington, D.C. 20510. If you have any questions concerning these procedures, please discuss them with Michael Davidson, Senate Legal Counsel, 642 Hart Senate Office Building, Washington, D.C. 20510, telephone (202) 224-4435. Also, Mr. Davidson is available to join you when you meet to discuss stipulations relating to facts or documents.

Sincerely,

Paul Sarbanes

Paul S. Sarbanes
Vice Chairman

Charles McC. Mathias, Jr.
Chairman

MICHAEL DAVIDSON
COUNSEL
BEN BENJAMIN, JR.
DEPUTY COUNSEL
MORGAN J. FRANKEL
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PHONE 202-224-4435

United States Senate
OFFICE OF SENATE LEGAL COUNSEL
WASHINGTON, DC 20510

August 26, 1986

The Honorable Peter W. Rodino, Jr.
The House of Representatives
Washington, D.C. 20515

The Honorable Hamilton Fish, Jr.
The House of Representatives
Washington, D.C. 20515

The Honorable Howard W. Cannon
Law Office
499 South Capitol Street, S.W., Suite 400
Washington, D.C. 20003

Mr. Oscar B. Goodman
Goodman, Terry, Stein & Quintana
520 South Fourth Street
Las Vegas, Nevada 89101-6593

Dear Messrs. Rodino, Fish, Cannon, and Goodman:

I am writing to confirm several scheduling and procedural matters which I have discussed in telephone conversations with Mr. Chabraja and Mr. Goodman.

The committee will meet on Wednesday, September 10, at 9:30 a.m., to discuss pretrial matters with the managers and counsel for Judge Claiborne. Although the August 15 pretrial letter allows for the filing of motions by September 8, it would be desirable to complete the briefing of pretrial motions, including responses to those motions, by that date so that the committee may hear argument when it meets on September 10. The committee will ask any party who wishes to oppose a motion to file a response within seven days of the filing of the motion. The parties are requested to provide for express delivery of their submissions to opposing counsel.

During the week of September 15 the committee has arranged to meet daily from 9 a.m. to 12 noon and from 2 p.m. to 5 p.m. to receive evidence. The meetings of the committee that week will be in SR-325, the Caucus Room.

Written applications for subpoenas may be presented upon the filing of each party's pretrial statement. Each witness who is summoned to appear before the committee will be entitled to a witness fee at a rate not to exceed $75 for each full day spent in traveling to and from Washington, D.C., and to reimbursement of actual and necessary transportation expenses. There is an express statutory prohibition against advances for per diem and transportation expenses. Dennis Doherty, the Rules Committee Auditor, can provide more specific information about reimbursement procedures.

In the August 15 pretrial letter, we stated that papers should be filed with the Clerk of the Committee on Rules and Administration. Anthony Harvey of the Rules Committee staff will serve as clerk of the committee under Impeachment Rule XI and papers should be delivered to him in SR-318. Mr. Harvey's telephone number is 224-0291.

One other name and number you should have is that of John Childers. Mr. Childers is the staff director of the Committee on Rules and Administration and he will be serving as staff director of this committee. His office is SR-305 and his telephone number is 224-0299.

Sincerely,

Michael Davidson

Michael Davidson

United States Senate
WASHINGTON, DC 20510

August 28, 1986

The Honorable Peter W. Rodino, Jr.
United States House of Representatives
Washington, D. C. 20515

Dear Representative Rodino:

Pursuant to Rule XII of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, I am writing to notify you of the meetings scheduled by the Committee of the United States Senate appointed to receive and to report evidence with respect to articles of impeachment against Harry E. Claiborne, Judge of the United States District Court for the District of Nevada. By order of the Chairman, the Committee will meet on Wednesday, September 10, 1986, at 9:30 AM in the Russell Senate Office Building, Room SR-301, to hear motions, statements, stipulations, and other matters pertaining to these impeachment articles. This meeting is expected to last all morning. If all pre-trial matters have not been disposed of during this September 10th meeting, a second meeting of this nature will be scheduled to take place during the latter part of this same week in September, 1986.

Under the authority of Senate Resolution 481, agreed to on August 14, 1986, and pursuant to Rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, the trial of Judge Claiborne shall begin on September 15, 1986, when the Committee shall begin receiving evidence and taking testimony at 9:00 AM in the Caucus Room of the Russell Senate Office Building, Room SR-325. By order of the Chairman, meetings for this purpose will take place Monday through Friday of this week in September, from 9:00 AM to 12:00 PM and from 2:00 PM to 5:00 PM, or until such time as the receiving of evidence and the taking of testimony has been concluded. If additional testimony or evidence remains to be taken at the end of the Friday meetings (September 19, 1986) additional meetings for this purpose will be scheduled in order for the Committee to "report to the Senate in writing a certified copy of the transcript of the proceedings and testimony had and given before such committee" as early as possible during the following week of September, 1986.

Sincerely,

John B. Childers

John B. Childers
Staff Director
Committee on Impeachment

United States Senate
WASHINGTON DC 20510

August 28, 1986

The Honorable Hamilton Fish, Jr.
United States House of Representatives
Washington, D. C. 20515

Dear Representative Fish:

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Committee on Impeachment

United States Senate
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August 28, 1986

The Honorable Howard W. Cannon
Law Office
400 South Capitol Street, S. W., Suite 400
Washington, D. C. 20003

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Committee on Impeachment

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August 28, 1986

Mr. Oscar B. Goodman
Goodman, Terry, Stein & Quintana
520 South Fourth Street
Las Vegas, Nevada 89101-6593

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Sincerely,

John B. Childers

John B. Childers
Staff Director
Committee on Impeachment

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SENATE IMPEACHMENT TRIAL COMMITTEE

Appointed Upon the Adoption of Senate Resolution 481, August 14, 1986, 99th Congress, 2d Session, Pursuant to Rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials

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WEDNESDAY, SEPTEMBER 10, 1986

U.S. SENATE,
SENATE IMPEACHMENT TRIAL COMMITTEE,
Washington, DC.

The committee met, pursuant to notice, at 10:13 a.m., in room SR-301, Russell Senate Office Building, Hon. Charles McC. Mathias, Jr. (chairman of the committee) presiding.

Present: Senators Mathias, Sarbanes, Hatch, Warner, Pressler, McConnell, Heflin, DeConcini, Pryor, Gore, and Bingaman.

Managers and counsel from the House of Representatives present: Peter W. Rodino, Jr.; Robert W. Kastenmeier; William J. Hughes; Romano L. Mazzoli; Dan Glickman; Hamilton Fish, Jr.; Henry J. Hyde; Thomas N. Kindness; Michael DeWine; and Nicholas D. Chabraja, counsel.

Respondent's counsel: Oscar Goodman, counsel; Senator Howard Cannon, counsel; and Michael V. Stuhff, associate counsel.

Staff present: Michael Davidson, counsel; Floyd M. Riddick, consultant; John B. Childers, staff director; John F. Rixey, Jr., deputy staff director; Anthony L. Harvey, clerk; Byron F. Hoover, assistant clerk; Gerald R. Gereau, security coordinator; Ann Pincus, press liaison; and Randy Dove, press liaison.

The CHAIRMAN. The committee will come to order.

On August 14, the Senate for the first time exercised its authority under rule XI, the rules of impeachment, by establishing a special committee to take testimony with regard to the impeachment trial of U.S. District Judge Harry E. Claiborne.

Today we convene to begin the task of discharging that important responsibility.

Impeachment is a process and a power contemplated by the Constitution as a rare act of Government, the removal of a lawfully inducted official from his office. We approach it seriously and carefully.

This committee's charter, while unique in the annals of the Senate, is a limited one. It has been created not in any sense to conduct a trial of this bill of impeachment, nor even to recommend the ultimate outcome of the process, but to develop the record on which the Senate may act. Our fidelity to this circumscribed grant of authority will help to determine whether rule XI will achieve its goal, which is to help the Senate to carry out with efficiency, and fairness, and equity its unique constitutional power to try all impeachments.

We have numerous pretrial motions, and requests for other rulings have been filed with the committee by both of the parties to this proceeding: the House of Representatives, acting through designated managers, and the impeached official, acting through his counsel.

This morning we will hear oral argument in support of and in opposition to these motions and to these requests. We hope to gain a clearer understanding of the positions urged by the parties to the proceedings. Following the conclusion of oral argument, the committee will recess to deliberate and will reconvene, I would suggest at this point, at 2:30 this afternoon, subject to events as they unfold before us this morning.

At 2:30, we should dispose of the motions and the requests to the extent that is possible. At that time I would like to advise the committee that I am also going to raise with you the question of quorum and the question of the hours that we will intend to keep next week because I think both of those are subjects that will involve every member of this committee.

Now, I propose, subject to any objection on the part of the committee, that each side have 1 hour to present its argument. We will begin with the managers on the part of the House of Representatives. That will be 1 hour in the aggregate. It is my understanding that the distinguished Chairman of the Committee on the Judiciary of the House, who will act as one of the managers for the House, would like to argue the first three motions and then give Judge Claiborne's counsel a chance to respond, and then go back to the other matter.

So, if there is no objection, we will have 1 hour to a side, and we will proceed in that manner.

I am asked by the distinguished Senator from New Hampshire, Mr. Rudman, to note that his absence is involuntary, that he is attending a funeral and is therefore unable to be with us today, but we look forward to his very important participation in the future. I hope that we can get on with the managers' statements, but before we do, let me call upon Senator Sarbanes, the vice chairman, to see if he has any comment at this point.

The VICE CHAIRMAN. Mr. Chairman, I will be very brief.

The committee undertakes this morning a very important constitutional responsibility on behalf of the Senate. I think each member of the committee is very mindful of that. I realize our time is limited, and I look forward to hearing the arguments of the managers on the part of the House of Representatives and the arguments of defense counsel regarding the impeachment articles on behalf of Judge Harry Claiborne.

I have no further statement at this time.

The CHAIRMAN. Does any other member of the committee wish to make any statement?

[No response].

The CHAIRMAN. Before I recognize the distinguished Representative from New Jersey, Mr. Rodino, let me just say that I observe at counsel's table my predecessor of the seat in which I am now sitting, Senator Howard Cannon. It is a pleasure to see you at this time.

Representative Rodino.

Mr. Rodino. Mr. Chairman, members of the committee, we appear today discharging our responsibility as managers of the House of Representatives in the impeachment trial of Judge Harry Claiborne. I present to you this morning a motion asking the Senate to convene as a court of impeachment to hear and resolve two important and historically significant pretrial motions previously filed by the House. These motions are a motion for summary disposition of the third article of impeachment and a motion to apply collateral estoppel in connection with the first two articles of impeachment, and they seek to preclude a reexamination of the conviction and the relitigation of certain issues which were actually litigated and necessarily determined in the criminal trial of Judge Harry Claiborne.

The impeachment of Harry E. Claiborne by the House of Representatives brings an impeachment trial to the Senate for the first time in 50 years and for only the 13th time in the history of this Nation. However, this impeachment is not simply the 13th. Rather, it is the first of its kind. For never before has the Senate heard the impeachment of a Federal official previously tried and convicted of a felony in the courts of this land, and never before has the Senate heard the impeachment of a man already incarcerated for his crimes.

The House believes that, because of the foregoing, the Senate is presented with a unique opportunity to determine what a prior conviction means in terms of the Senate's obligation to try the impeachment. The Senate also has the opportunity to determine what the parameters of its factual inquiry will be in this and similar cases.

Mr. Chairman, several questions regarding the Senate's power and the proper exercise of its discretion are suggested. Is the Senate obliged to litigate the tax fraud charges de novo? Alternatively, should the Senate accept the fact of the conviction itself as sufficient evidence of misconduct? Should the Senate preclude the relitigation of facts previously litigated and necessarily determined in the prior criminal proceeding? Is it sufficient if the Senate, instead of relitigating those facts, satisfies itself that there was a substantial record in the criminal proceeding and that Judge Claiborne was afforded substantive and procedural due process, and that the resultant conviction was not an arbitrary and capricious judgment?

Mr. Chairman, these are the issues presented by the first two motions filed by the House of Representatives, and the motions delineate the Senate's obligation and sole power to try impeachment issues. The motions also speak to discretion implicit in that power to adopt procedural evidentiary and substantive rules and doctrines to enable the Senate to reach its judgment in a fair and dispassionate way.

We also believe these motions provide the Senate with an opportunity to shape history, and we respectfully urge you not to make the mistake which may prove to be historically costly of launching into an ill-defined evidentiary hearing without first addressing and resolving these motions. Whatever the ruling, the motions cry out and are entitled to resolution.

Mr. Chairman, because this special committee has been delegated only the authority, as you have so well enunciated, to receive evidence and rule on evidentiary questions and therefore cannot decide the issues raised by these substantive motions. I believe argument on them is properly addressed to the entire Senate.

If, however, it will help you to determine whether to convene the Senate in response to this motion, Managers Hyde and Hughes are prepared to argue the two substantive motions before this committee. But I urge you once again, and respectfully, Mr. Chairman and members of the committee, not to permit these substantive motions raising questions of both historical and practical significance to become moot by a failure to obtain a ruling prior to the commencement of an evidentiary hearing.

Thank you.

The CHAIRMAN. Thank you, Representative Rodino.

Representative Hyde.

Mr. HYDE. Mr. Chairman, gentlemen of the special committee, I am offering the motion for summary disposition of the third article of impeachment. Article III of the articles of impeachment pleads the fact of conviction as sufficient evidence of impeachable conduct, and we argue that recognition of the judgment merely treats as established those facts which have already been found true beyond any reasonable doubt in a proceeding which afforded Judge Claiborne full procedural rights.

Counsel for the respondent has asked for a "full and fair impeachment trial" so we must come to grips with just what those words mean within the context of this proceeding. Judge Claiborne insists that full and fair means a trial de novo of the issues litigated in the U.S. District Court in Reno, and we say no. He has had his day in court. Common sense and logic require another course.

The ultimate issue in any impeachment trial is whether there has been a violation of the public trust. The House of Representatives submits that evidence of Judge Claiborne's violation of the public trust is his conviction obtained in a fair and final proceeding of two felony offenses; that this evidence may be submitted quickly and is essentially uncontroverted does not make this proceeding any less of a trial.

The facts are of record and have been supplied to you. With your permission, I shall recall some of them. On August 10, 1984, a jury convicted Judge Claiborne on two counts of willfully underreporting taxable income totaling $106,651.89. Judgment was entered on the verdict, and he was sentenced to a 2-year term on each count and a $5,000 fine on each count. On July 8, 1985, his conviction was affirmed by the U.S. Court of Appeals for the Ninth Circuit, which court issued a written opinion specifically rejecting Claiborne's argument that the trial evidence was insufficient to sustain the conviction and asserting from their review of the record the defendant was afforded a fair trial, fully consistent with the protection of his constitutional rights.

After the appeals court denied his motion for rehearing, and a suggestion for rehearing en banc, the U.S. Supreme Court denied a writ of certiorari.

Having exhausted all direct appeals, on May 16, 1986, Judge Claiborne reported to the Federal prison camp at Maxwell Air Force Base in Alabama to begin serving his sentence where he is today. Thereafter, Judge Claiborne filed other motions, only one of which remains unresolved. That motion to vacate is based on two assertions: one, that Government agencies participated in an illegal seizure of evidence from his home; and, two, that Government officials prevented the grand jury from considering certain exculpatory evidence.

Now, it is important, it is essential to note that neither ground for this motion to vacate attacks the integrity of the jury's guilty verdict, and we point out that the articles of impeachment are based on Judge Claiborne's misconduct, not any alleged by the Government.

I cannot overstress this point. The purpose of this trial, I respectfully suggest, is to determine if Judge Claiborne is guilty of such misconduct as warrants his removal from office. All else is diversion; all else is distraction.

We begin with the Constitution which says that the Senate shall have the sole power to try these articles of impeachment, and we assert that inherent in this power to try is the power to prescribe reasonable rules of procedure, substance, and admissibility of evidence as well as the application of judicially developed concepts and doctrine.

One exercise of that power is the convening of this special committee, but certainly it is within your power to determine the scope of evidence you will receive and certainly you have the power to accept and credit the judgment and conviction of Judge Claiborne as evidence of his having participated in a felony crime.

The CHAIRMAN. Representative Hyde, could I interrupt you for a question on that point?

Mr. HYDE. Yes, sir.

The CHAIRMAN. How do you reconcile the proposition that we should credit the record made in the U.S. courts with the doctrine of separation of powers and with the constitutional provision you have just cited that the Senate has the sole power to try impeachment? How can we then either be bound by or depend on the record in the criminal court?

Mr. HYDE. You need not be. I am suggesting that you should. I am suggesting that you give credit to another proper adjudicatory body as you sit as an adjudicatory body full faith and credit, and I will try to develop that as I go on.

The House of Representatives asks the Senate to recognize this judgment of conviction as an adequate basis for Judge Claiborne's conviction on removal from office under article III of the articles of impeachment. Now, we insist that the trial forum and his subsequent appeal granted Judge Claiborne full procedural rights, the presumption of innocence. He had a unanimous jury verdict, based on a finding of guilty beyond a reasonable doubt, and the regularity of these procedures was affirmed on appeal.

Now, to the argument that we are urging the Senate to abdicate its unique constitutional function as the sole trier of fact and judge thereof, we reply that the Constitution indeed gives the Senate the sole power to judge but does not mandate that the Senate be the sole finder of fact. The doctrine of separation of powers does not require that the Senate ignore the verdict and trial record had in this case; and if the Senate finds the trial record to be devoid of any substantive irregularity, to give those judicial proceedings full credit.

Under the Constitution you have the sole power, but it makes a world of sense for you in the exercise of that power to accept the judgment of the judicial branch of the Government. We present this issue; either a finding of conviction for a felony offense is a sufficient basis under the Constitution for removal from office, or article III should be stricken. We will present no evidence in support of this article except the certified record of trial and appellate proceedings in the criminal case of the *United States of America* v. *Harry E. Claiborne.*

On the point of finality of this judgment, of what effect is the unresolved post-conviction motion? We respectfully suggest it is a fundamental principle of the law of judgments that such a motion does not deprive the judgment of its conclusive effect, and this is particularly true, as here, where the motion does not challenge the integrity of the factfinding process nor assert a single claim of innocence. This principle is particularly compelling in a criminal case where a succession of petitions for relief are routinely filed after conviction.

Senator HATCH. Congressman Hyde, if I could just interrupt you?

Mr. HYDE. Yes, sir.

Senator HATCH. I am not trying to interrupt your excellent presentation, but what if we had a case here where you had an acquittal, would the Senate be bound by an acquittal?

Mr. HYDE. No. I am not saying that you should be bound by it. I am saying take it into consideration, and it is up to you to decide. In that circumstance, I should think you would look at the circumstances to see if high crimes and misdemeanors were committed.

Senator HATCH. But if we do not look at this matter fully, or at least relatively fully, and I do not think we can go through a full-blown trial in any event, but if we do not look at it from all aspects, it seems to me that that is an important question and we may be setting a very important precedent. If we just accept what the courts have done with regard to a conviction, will we not have to accept what the courts have done with regard to an acquittal?

I can think of at least one case of a sitting judge in this country today who was acquitted while those who were reputedly offenders were convicted. So his acquittal was inconsistent with the conviction.

Mr. HYDE. Senator, if I may respond. A conviction is a finding by a jury unanimous beyond a reasonable doubt that there was criminal intent. A not guilty may mean anything. It may mean that the burden of proof beyond a reasonable doubt was not sustained. It may mean several things. But a conviction means something very significant, especially when it has been appealed to the ninth circuit and when certiorari has been denied. I think that is proof that you have to take notice of. What you do with it is up to you.

Senator DECONCINI. Representative Hyde, if I could.

Mr. HYDE. Yes, Senator.

Senator DECONCINI. Do you place more significance to a conviction than to an acquittal?

Mr. HYDE. Yes, because the burden of proof beyond a reasonable doubt has been sustained. That is the highest burden of proof in law. The presumption of innocence has supported and sustained the defendant all through that trial. The defendant has had a lot going for him in the trial, and when he is found guilty, that is a condemnation by his peers.

Senator DECONCINI. Certainly. I do not disagree.

Mr. HYDE. And of greater weight than a not guilty, I would submit. And I suggest that the judgment of conviction is entitled to credit and should be dispositive of this impeachment trial because of the long established principle that adjudicatory bodies should recognize and credit judgments of other tribunals.

Now, since Judge Claiborne has had a fair opportunity to present his defense in an ideal forum for resolving factual disputes, since he participated fully in his trial, was represented by very able counsel, submitted 15 witnesses on his behalf, and testified himself, there is no reason to allow him to relitigate his case in the Senate Chamber. The historical, constitutional principles of full faith and credit reflect a variety of valid concerns, the notion of comity, the need to prevent vexatious litigation, the need for finality, the need to conserve judicial and, here, senatorial resources. Thirty-two judges have considered Harry Claiborne's case.

On the issue of instruction, one of the most difficult in criminal law, the trial judge charged the jury correctly. No argument on this point was ever made on appeal. The jury was charged to accord Judge Claiborne the presumption of innocence. The government's burden of proof was beyond a reasonable doubt, and the jury was specifically instructed on Judge Claiborne's theory of defense; that even if they found him to be grossly negligent, it would not be enough to convict. The jury had to find that he intended to commit the crimes he was charged with. This was a regular proceeding reviewed by an appellate court whose purpose was to review the regularity of the trial, and the Supreme Court found nothing requiring them to act.

So Judge Claiborne comes to you and says the Senate ought to try these matters de novo; then he is obliged to set forth with particularity how this conviction and the judgment thereon is fatally flawed. And this he has utterly failed to do.

Claiborne's charges, his claims, his pleadings never point out how all of this alleged massive conspiracy, ranging from the Chief Justice to the head of the FBI to the IRS, to all sorts of people without number, affected this jury trial in Reno. He has had his day; indeed, he has had his days in court.

We respectfully repeat you ought to accept the judgment of the court as to the fact of his felony conviction. Now, the remaining question is whether you will determine that willful tax evasion is a high crime, a misdemeanor, within the meaning of the Constitution. I think it is worth remarking that a final judgment of felony conviction has been held to be sufficient to impose immediate and summary suspension from the practice of law. Disbarment has been automatic, or after an abbreviated hearing in which the fact of conviction cannot be relitigated. Sure, suspension of law practice is not identical to conviction by the Senate, and removal from office, with the concept of finality based on a litigant's full opportunity to participate in a prior proceeding, is clearly analogous. And if Judge Claiborne could no longer practice law, in most jurisdictions of the country he should not be permitted to preside over matters in a U.S. district court.

Judge Claiborne was convicted of violating 26 U.S.C. 7206(1) which provides a violator shall be quilty of a felony. Now, felony at common law meant infamous or serious crimes generally punishable by death or imprisonment. Similarly, State and Federal courts have held that where fraud is an element of the crime, it constitutes moral turpitude.

Tax evasion requires an attempt to defraud. Violations of 26 U.S.C. 7206(1) have been held to be crimes of moral turpitude sufficient to justify disbarment or suspension of convicted attorneys from the practice of law. And surely a Federal judge should not be held to a lesser standard.

The House respectfully suggests that common sense and logic require that the Senate do not permit the respondent and his counsel to distract and divert the Senate from focusing on the proven guilt of Judge Claiborne, his felony conviction in determining that this unfits him for the office of U.S. district court. All else is collateral; all else is ancillary; all else is smoke.

The spectacle of a convicted felon sitting in a Federal prison bearing the title "Your Honor" is intolerable. Respondent will enter the Senate as Judge Claiborne. He ought to leave the Senate as inmate Claiborne. Only then will the public trust be vindicated in us as Members of Congress and in the judiciary.

Thank you.

The CHAIRMAN. The Senator from Tennessee.

Senator GORE. Representative Hyde, if I might put a brief question to you

It seems to me there is quite a difference between asking the Senate to take this conviction into consideration and give it appropriate weight on the one hand and asking the Senate to grant a motion of summary disposition solely on the basis of this conviction on the other.

Even though the post conviction motion does not challenge any of the underlying facts used to establish guilt, what would the public's perception be if the Senate acted solely on the basis of the conviction and then the conviction was set aside as a result of this postconviction motion?

It seems to me that a cloud would be placed over the proceedings. It is quite appropriate for the House to suggest that the Senate consider a motion for summary disposition, but would not the perception of this procedure be clouded if the conviction was subsequently set aside, albeit because of misconduct, alleged misconduct on the part of the prosecutors in the original case?

Mr. HYDE. Well, Senator, the public perception now is, how can this man still be a Federal judge collecting his salary and be sitting in a Federal prison? But if indeed——

Senator GORE. That may be of temporary duration.

Mr. HYDE. I understand. If indeed his conviction were set aside on the grounds that the government invaded his house to get evidence and that somehow led to evidence they would not have had, frankly it would be a Byzantine line of reasoning that would permit this to be vacated. But even so, that motion to vacate does not assert his innocence. He does not assert that he did not sign these returns and that the amounts were wrong. But I would suggest to the Senator that my colleague, Bill Hughes, from New Jersey will argue collateral estoppel less draconian than my request, but I simply say that this judgment is entitled to full faith and credit; it was a forum where he had every protection, and that to ask you to relitigate de novo is an imposition and a distraction.

The VICE CHAIRMAN. Mr. Chairman, could I follow up on that?

The CHAIRMAN. The Senator from Maryland.

The VICE CHAIRMAN. As I understand it, the other Articles of Impeachment will seek to present evidence, either directly or through collateral estoppel, with respect to the behavior of Harry Claiborne. Is that correct?

Mr. HYDE. Yes, sir. We are prepared.

The VICE CHAIRMAN. And, of course, if those are acted upon in a favorable way by Senate, that will lead to his removal from office, and the problem you point to of an inmate in a penitentiary still bearing the title of Judge will come to an end.

But your Article of Impeachment, as I understand it, in effect would establish the precedent that the conviction, the fact of the conviction alone could be presented as a basis for impeachment; is that correct?

Mr. HYDE. Yes, Senator, because this is a precedent-setting proceeding, because never before has a U.S. District Judge been impeached who already stands convicted.

The VICE CHAIRMAN. Well, then, I am not clear on your response to Senator Gore that if the conviction were to be reversed, albeit on some technical ground—which, of course, happens—it did not reach to the underlying conduct on which a jury made its determination.

In what position would we then find ourselves if we were to establish the precedent of approving an Article of Impeachment solely on the basis of a conviction, without looking at any evidence to substantiate it?

Mr. HYDE. Senator, I would not suggest that you merely summarily, because of the fact of the conviction, convict. I suggest that the trial transcript, the motions, the memorandum of law which we have filed, all should be studied, and especially the decision of the Ninth Circuit which reviews in some detail all of the allegations made by the respondent.

And I think if you do that, you would understand or you would come to the conclusion that indeed this man has been found guilty and had his day in court. Now, should the judgment be reversed on this post-trial motion, nothing therein goes to the issue of the integrity of the verdict, and you are not bound, surely, by what the courts find one way or the other. I am simply suggesting it ought to be very persuasive that he was found guilty.

The **Vice Chairman**. But if we wanted to hold to that position, would we not have to have an evidentiary basis to do so? Your position, as I understand it, says take the conviction and that alone is enough.

Now, if we are anticipating a situation where we want to avoid a precedent of something happening to the conviction, would we not need some evidentiary basis upon which to rest?

Mr. **Hyde**. I agree, and I think the trial transcript provides that evidentiary basis

Senator **Pryor**. Mr. Chairman.

The **Chairman**. The Senator from Arkansas.

Senator **Pryor**. Congressman Hyde, I am a little concerned and, I guess, troubled by the issue of illegal search and seizure. I am wondering if it is the position of the House of Representatives that this issue was fully litigated at the lower court level and understood in the House Chamber at the time of the debate.

Was it the sense of the House that there was no illegal search and seizure?

Mr. **Hyde**. That issue has not been litigated because it is an after-discovered theory. This is something new. It was not presented to the grand jury, to the trial court, to the ninth circuit, nor to the Supreme Court. After all that was over, then suddenly evidence was adduced that there was an illegal breaking and entering.

However, even giving that the best possible intendment on behalf of the respondent, nothing was found that was of such a nature as to taint the verdict. One might condemn an illegal entry, assuming it happened—which we deny. One might condemn that, but the exclusionary rule is designed to punish the illegal entrance, not to sanctify the guilty party who was found guilty of tax evasion.

So in a criminal trial, yes, that would be relevant on a motion to suppress. This is not a criminal proceeding, and we say even if true, it has nothing to do with the issue here, the integrity of the verdict, and that is the misconduct not of the FBI as alleged, but the misconduct of Judge Claiborne.

It is not easy, but I think that is how we have to look at it.

The **Chairman**. The Senator from Utah.

Senator **Hatch**. I would be happy to yield.

Senator **Warner**. Just a procedural question. At some point in time will the committee be able to hear again from Mr. Rodino and have the opportunity to ask questions of the chairman?

The **Chairman**. We can arrange that.

Senator **Warner**. Thank you very much.

Senator **Hatch**. Congressman Hyde, just one other question that I have.

Now, as I understand it, those who are defending the judge want to present new evidence primarily concerning prosecutorial misconduct. Is it your position that we should not take that evidence even though it may be new evidence?

Mr. **Hyde**. Yes, sir. Congress ought to listen to that if indeed there is any substance to it, but since that does not go to the integrity of the verdict nor to the misconduct of Judge Claiborne, then it is a diversion.

Senator HATCH. So you are saying that that is really irrelevant to the final determination.

Mr. HYDE. Yes, sir.

Senator HATCH. Whether or not he is guilty of what the——

Mr. HYDE. We are here to determine his fitness for office, not whether the constable blundered.

The CHAIRMAN. Senator Bingaman.

Senator BINGAMAN. Congressman, could I just ask, is it your position that all we need to do is determine that Judge Claiborne was guilty of misbehavior? I notice in your Articles of Impeachment you say that he was guilty of misbehavior and of high crimes and misdemeanors in office.

Do we have to show both? Do we have to determine both or just that he was guilty of misbehavior in order to grant an impeachment?

Mr. HYDE. In my judgment, high crimes, misdemeanors and misbehavior all cover the same course of conduct. High crimes and misdemeanors seem to me a higher standard than misbehavior; that is seismically vague. But I think a conviction of a felony count, two felony counts involving fraud and criminal intent are indeed high crimes and misdemeanors.

So I have no hesitancy to say apply that standard.

Senator BINGAMAN. So you say that we have to find him guilty of high crimes and misdemeanors in order to go ahead?

Mr. HYDE. No, I do not say that, Senator. If the respondent were guilty of misbehavior of an egregious nature which brought the judicial system and the judiciary into public disrepute, were I a Senator that would be enough for me, but that is something you will have to decide.

I am saying it is not a really significant question here because high crimes and misdemeanors and felonies, for that matter, are indeed present and have been committed.

The CHAIRMAN. Thank you, Representative Hyde.

Mr. HYDE. Thank you, Senator.

The CHAIRMAN. Representative Hughes.

Mr. HUGHES. Thank you, Mr. Chairman and members of the panel, and good morning.

The motion that I offer is very similar to the motion offered by Mr. Hyde in that it asks the Senate to accept well-established principles of American jurisprudence regarding proof of facts. However, as your colleague, Senator Sarbanes, indicated, Mr. Hyde's motion for summary disposition is directed to article III, which relates to Judge Claiborne's conviction for filing false income tax returns for the years 1979 and 1980. The motion I offer is directed to articles I and II of the Articles of Impeachment which relate to the conduct of filing false income tax returns for the years 1979 and 1980. It asks quite simply that the Senate accept without further proof the verdict of the jury on two extremely critical points: No. 1, that Judge Claiborne knowingly and intentionally failed to report the true amount of his income for each of the 2 relevant tax years, 1979 and 1980; and that, No. 2, he did not rely in good faith upon the work of his tax preparers.

Basically I am asking the Senate in this motion to accept the doctrine of collateral estoppel, a doctrine that has been part of our

American system of jurisprudence for the 200 years that we have been a Nation. We borrowed that, obviously, from our English ancestry, and it has served us well over the years. It is a very simple doctrine. It is based on the premise that where a party has been able to litigate certain issues in dispute before a regular and appropriate forum, one that provides procedural and substantive safeguards, as the jury system provides, that that finding of fact by that tribunal is final insofar as those issues.

It is unique in this situation, as it is in many situations, in that it is the very same issue that is to be tried before this tribunal and, of course, it is the same party who puts it in dispute. We are not presuming to suggest to the Senate what the Senate should determine as to what type of a trial should be accorded Harry Claiborne. That is something for the Senate to determine under its mandate under the Constitution to provide a trial.

We are merely suggesting that it is appropriate to take from a coordinate branch of government a finding of fact that has already been determined by the triers of fact beyond a reasonable doubt and found to be true.

It was the prosecution's requirement to secure a conviction under this particular title of 26 to establish the following: first, that Harry Claiborne made or subscribed a tax return that was incorrect as to a material fact; two, that the return contained a written declaration that it was made under penalty of perjury; third, that Harry Claiborne did not believe that return to be true and correct, in fact; and, finally, that Harry Claiborne subscribed willfully to that return, not by accident, mistake or negligence.

The jury of necessity in its finding beyond a reasonable doubt that the defendant in fact did commit a violation of those two sections of title 26, found that Harry Claiborne failed to report that income knowingly and intentionally, and did not rely upon his tax preparers.

The motion I offer and ask this tribunal to accept that as a fact found by a jury of his peers. The rationale is obviously to avoid repetition, to avoid an inconsistent result, and to set a proper precedent for cases in the future. And as our chairman indicated, it is important that we set a proper precedent for any cases to follow since this is a case of first impression.

This tribunal, the Senate, in trying Judge Claiborne will have to determine whether he has indeed committed high crimes and misdemeanors, misbehavior in office for which he should be convicted and removed from office. In reaching our judgment that the Senate should apply this well-established doctrine, in my judgment of collateral estoppel, this particular case was framed by the defendant. There was no dispute at the trial level, as the transcript will adequately show, as to the filing of this return, with an under-reporting of income for both tax years. That was accepted. That was not in dispute. There was no dispute that the tax return contained a written declaration that it was made under penalty of perjury. The only things in dispute in fact was what I have indicated dealing with willfulness.

Harry Claiborne's counsel, in fact, in his opening argument to the jury indicated, "The only issue that we see from the defense point of view in this adversary system is whether or not Judge Claiborne intentionally filed an incorrect return."

In closing arguments to the jury, the Government said, "The only real issue in the 1979 year is whether J. Wright"—the accountant of some 30 years—"got Defense Exhibit No. 1," which is an April 11, 1980, letter from Harry Claiborne, purportedly sent to J. Wright which outlined his income for that year 1979.

Defense counsel in his closing arguments said the following, and I quote:

> You would have to believe that the April 11, 1980, letter, which I have said is the most critical piece of evidence in this case, is a complete forgery, that it was made up after the fact and very cleverly fitted in with that check—that is, an $8,000 check and a $2,500 check—and the date of the application for extension.

He goes on,

> You would have to believe that Judge Claiborne and his secretary, Judy Ahlstrom, both perjured themselves completely under oath in this trial on the stand, and you would have to believe that Wright's testimony is completely truthful and convincing. And I suggest to you that no reasonable person could reach those conclusions.

The CHAIRMAN. Representative Hughes, I am just advised that there is a vote in the House of Representatives. Let me inquire, Chairman Rodino, whether you want to recess at this point, interrupt Mr. Hughes, or let him finish.

Mr. RODINO. Mr. Chairman, in view of the fact that the vote is an important matter that is presently before the country, the arrest of Mr. Daniloff, in the sense of the Congress resolution that we are debating now, I would recommend that we recess.

The CHAIRMAN. Without objection, we will recess for 15 minutes. May I ask members of the committee if they would join me back in room 311 and we can discuss some of these issues.

[Brief recess].

The CHAIRMAN. The committee will resume following the recess to permit members of the House to vote.

Mr. Hughes was addressing the committee. Mr. Hughes, do you wish to continue?

Mr. HUGHES. Thank you, Mr. Chairman.

The CHAIRMAN. I might point out that the House managers have used 40 minutes to date.

Mr. HUGHES. Is the Chair including the questions?

The CHAIRMAN. At this point we are, but we will be equitable about that.

Mr. HUGHES. I thank the Chairman.

Well, thank you for accommodating the House to enable us to vote.

As I indicated, the attorneys, the prosecution and the defense, framed the issues for the jury. With regard to the 1980 return, defense counsel said this to the jury: "The only issue as to 1980 is whether Judge Claiborne gave Mr. Watson"—that is Jerry Watson, the 1980 tax preparer—"the yellow sheets, whether they were relied upon by Mr. Watson or someone in his office in preparing the 1980 return, and whether the Judge believed the return was properly prepared when he signed it." So the attorneys framed the issues. Unlike the previous motion, we are asking this body to credit, through collateral estoppel principles, the findings of fact by the jury which will not be disturbed by any post-conviction relief because they do not go to the heart of the facts. They are not in dispute. In the application under 2255, the present relief is pending before the courts.

The process used the jury system, provided all the safeguards every defendant in every court throughout our land receives. The defendant, who is a lawyer himself, as you know, and a member of the Federal judiciary, availed himself fully of this process; indeed, he has filed some 92 motions for relief, including five appeals to the Court of Appeals, the Ninth Circuit, two appeals to the Supreme Court for a writ of certiorari, which was denied, and there are numerous motions now pending for post-conviction relief. He has availed himself of these procedures.

The facts in this case found by the jury—that is, the question of willfulness—is not just inferred by adequate evidence; there was overwhelming evidence in this case from which the jury could infer a question of willfulness, which was the only question to be decided by the jury.

For instance, before 1979, the defendant deposited all his income, fee income, in his bank. Statements were directly to his accountant of some 30 years, J. Wright. In 1979 and 1980, a substantial part of his fee income was not deposited; it was cashed at casinos. Indeed, in 1979 alone, eight of the 14 checks were cashed in casinos. Harry Claiborne, in his own handwriting, gave Wright the income from which the return was filed in 1979. In 1980, he abandoned his accountant of some 30 years and hired Jerry Watson—who was not an acquaintance of his, had no relationship before, he was not an accountant—to prepare his 1980 return at three times the cost, about $2,000 compared to about $600 that he paid Wright for preparing his income tax return and doing the basic accounting.

Again, Harry Claiborne walked by his own bank to a casino to cash a $37,500 check in prior legal fees. Harry Claiborne reported none of the $88,000, roughly, in income he received in 1980. In September 1980, Harry Claiborne had written to another attorney in connection with an estate where Harry Claiborne was owed money and told that attorney he was desperately in need of money. The 1980 return, the defense called an aberration because it was done in pencil, it did not make sense, it referred to capital losses where there were none, some hundred thousand. In 1980, he filed his own request for an extension in which he indicated he owed $41,000 to the Government, and after he received the return that was prepared by Jerry Watson, he received $44,000, roughly, in moneys back from the Government.

The facts were overwhelming for the jury to find as a fact that this defendant did indeed commit the offense of filing false income tax returns in 1979 and 1980. Much of the evidence I have just recited was not in dispute. There were all kinds of documentary evidence that was put in in a regular fashion without objection.

The CHAIRMAN. Mr. Hughes, can I interrupt you to ask one question at this point? Would it not be true under the House's view of the applicable intent standard that the Senate would have to find the same willful and knowing intent in order to convict under Articles I and II?

Mr. HUGHES. Under Articles I and II, what we are asking is that this body credit—that is, accept—the findings of a tribunal.

The CHAIRMAN. Including the finding of a willful——

Mr. HUGHES. Willfulness. That is precisely what we are asking this tribunal to do.

The CHAIRMAN. That is the point I wanted.

Mr. HUGHES. Because it has been put in contest and has been found to be true by a jury, and it was framed by defense counsel and prosecution in just that fashion. You cannot find Harry Claiborne guilty of these offenses unless you find that he filed these returns intentionally, willfully, and not by mistake or reliance upon his tax preparer.

Now, we are asking this tribunal to credit that evidence—it has already been determined—and not relitigate that issue on these key points.

Senator DECONCINI. Mr. Chairman.

Representative Hughes, if I could, if we here decide to not uphold your argument, is the House then prepared to bring to us evidence of what was brought before the trial court in the proof that this man willfully did what he has been convicted of?

Mr. HUGHES. Yes, Senator. I mean, there would be other proofs that we would have to adduce. In fact, we did indeed endeavor to stipulate much of the evidence that was not in contest to save this body the time. But, of course, the defendant would not stipulate to evidence that went in as a matter of course without objection, in most instances, documentary evidence.

Now, that is what we have asked you to go on. Let us examine for just a moment what the defendant would have us do. Where would he take this body?

Now, I submit that a fair reading—and I have read every exhibit that they have submitted—a fair reading of their exhibits is a shotgun, scatter gun attack upon all the coordinate branches of Government. The defendant wants to try the system.

If you examine his memorandum and supporting documents, he does not talk very much about Harry Claiborne and what Harry Claiborne did, the conduct that Harry Claiborne was found guilty of. No. This defendant wants to try the system. He wants you to subpoena the Chief Justice of the United States. He wants you to subpoena the former Attorney General, William French Smith. He wants you to subpoena the Director of the FBI. He is alleging a conspiracy of sorts to deprive this defendant of his constitutional rights. He wants to subpoena the former U.S. attorney, other assistant U.S. attorneys. He wants to subpoena the special agent in charge of the FBI, Yablonsky. He wants to subpoena other agents who interviewed witnesses. He wants to subpoena members of the Internal Revenue Service. He wants to subpoena those that deal with the ethics section of the Judiciary. He wants to subpoena Judge John Smith of the District Court of D.C. to question Judge Smith about why he reduced the sentence of a defendant who was not even a witness in this matter. He would have you subpoena a whole array of witnesses that he wants to put on trial to in fact take you away from the only issue, really, that is before this tribunal, and that is the guilt or innocence, the conduct of this defendant, Harry Claiborne.

He would in fact challenge——

The **CHAIRMAN**. Senator Pressler.

Senator **PRESSLER**. I think you make an excellent point there. Let us say that we adopt this motion, and I am going to be supportive of the Chairman in it, let us say that when we went to the full Senate and some member wanted to examine any issue of fact, would the full Senate be precluded from examining any issue of fact if this committee adopted the motion?

Mr. **HUGHES**. Senator, the Senate cannot be deprived of hearing whatever evidence the Senate wants to hear. We are not so presumptious to suggest to the Senate what the Senate should do. We are trying to provide some guidance. But the Senate can call additional witnesses if the Senate so desires.

I think the Chairman's motion is an extremely important one. We have asked this body, this special panel, to convene the full Senate to hear what in essence we believe are substantive motions as opposed to procedural motions.

Senator **PRESSLER**. I think that is an important point. If some member of the full Senate got interested in some aspect, even if this motion were accepted by this committee, it would not affect the full Senate's ability to seek some——

Mr. **HUGHES**. That is correct. We are asking in this motion, however, to credit. As we encourage tribunals to do throughout our country and have historically to credit the findings of fact by a jury that has in fact determined where the truth—the jury had the opportunity to examine the demeanor of the witnesses, to examine their statements, the explanations and the alibis, and make a determination as to where the truth lies. Obviously, the jury could not believe both the defense and the prosecution because there was a diametrically opposed position on these fact issues. They were resolved against the defendant. In essence, the jury found that the defendant did not tell the truth. We are asking this tribunal to credit what has been done in a coordinate branch of the Government that goes to that factual issue, the question of willfulness and reliance.

What does the defendant suggest will be the result? He makes no suggestion as to what would be the result if he leads you down—and I know he will not—this primrose path, he does not attack the facts of his conviction as such; he wants to try everybody except Harry Claiborne. I might say that is not necessarily unknown to the criminal justice process. Many defendants end up defending themselves by trying everybody else, including the victims of crime. So it is not unusual. But I think that the defendant demeans this body by suggesting he could take you on that kind of a fishing expedition and circus, where he put on trial the Chief Justice and ask the Chief Justice what his feelings are about Nevada, for instance, and why he appointed Judge Hoffman to handle this case as opposed to others; and to put members of the Circuit Court on trial as to whether they really read the briefs, as he would suggest, is demeaning as a process. And even if you were to be taken—and I am sure you will not be taken in that direction—where would you end up? You would end up with a defendant who is presently convicted as a felon sitting in jail, writing memorandums and briefs, apparently, who is a sitting Federal judge collecting a salary, refusing to relinquish his chambers in a system that is already congested, and it would not change the fact that no matter what is done, this defendant has been found guilty by a jury of his peers, a system that he knows extremely well and was a product of. It would not change that fact. It is for that reason that collateral estoppel is a doctrine that should be applied in this instance.

Thank you, Mr. Chairman.

The **Chairman**. Thank you, Representative Hughes.

Mr. Goodman.

Mr. **Goodman**. Thank you, sir.

Senator **Pryor**. Mr. Chairman, excuse me. Is it all right to ask one question?

The **Chairman**. Yes. The Senator from Arkansas.

Senator **Pryor**. Congressman Hughes, just one question. On your second motion to apply the collateral estoppel to specific issues raised in the first two articles. This will be very quick. If we adopt it, if this committee adopted this motion, would we not be basically applying an estoppel theory to ourselves to go forward and ask questions through the chairman or through counsel to subsequent witnesses relative to facts which might be in dispute?

Mr. **Hughes**. Not necessarily. I think, Senator, all that you would be doing would be crediting the findings of a jury that has already litigated the issue of willfulness. That is all that we are asking you to do on those two specific issues.

Senator **Pryor**. The collateral estoppel that you are asking to be adopted only goes to the issue of willfulness?

Mr. **Hughes**. Willfulness and reliance, that in fact the defendant did in fact file an income tax return for 1979 and 1980 that was wrong, that was incorrect, understated to the Government, it was done willfully and intentionally, and it was not done in reliance upon tax preparers, which, of course, goes to the issue of willfulness, but which was specifically put in issue in the trial court and framed by counsel and resolved against this defendant.

Senator **Pryor**. Thank you, Congressman.

The **Chairman**. The Senator from Virginia has requested an opportunity to address a question to Chairman Rodino.

Senator **Warner**. Mr. Chairman, I think we could hear you from there. We are about to address this issue of the constitutionality of establishing under Rule XI of the Senate this committee. Mr. Hyde, I think, has directed some of his remarks——

The **Chairman**. Wait a minute. Would Chairman Rodino come to the microphone so that the reporter can be sure to get his response?

Senator **Warner**. Thank you, Mr. Chairman. I will repeat what I started to say. That we are about to address this issue of the constitutionality of establishing under Rule XI of the Senate this committee. Representative Hyde addressed some of his opinions on this. I personally would like to have your views before we begin to hear from Mr. Goodman.

Do you have any questions whatsoever about the constitutionality? The House has invested a tremendous amount of time, the members of the body itself, and despite what Mr. Hughes has said, I think the institution of our Government is on trial. We have a duty commensurate with that owing the defendant, owing our Nation's public that this trial will be conducted in a manner consistent with the Constitution and the interpretations thereof.

Mr. RODINO. Mr. Senator, in answer to your question, having spent considerable time and research on this issue, I can state emphatically there is no question. However, I might say to you that because we anticipated that such a question might be asked, we have prepared in response to that question an argument which is to be advanced by our special counsel.

I think that if the Senator is interested in hearing that argument at this time, we may do so. It was not anticipated that that would develop at this time.

The CHAIRMAN. I think, Mr. Chairman, we ought to proceed, and we will get to that question.

Senator WARNER. I was very anxious to hear your views in view of your long association with the issue.

Mr. RODINO. Well, let me say, if I might, just briefly, and I think I will not burden the committee.

Having dealt considerably with this issue for a long period of time, and sadly now, having been given this other responsibility, we approached it with that question in mind. I can assure you that all of our research, all of our study convinces us in a very compelling fashion that we are proceeding in a very constitutional way.

Senator GORE. Mr. Chairman, may I follow up very briefly?

The CHAIRMAN. Senator GORE.

Senator GORE. Nevertheless, it is your considered judgment that action upon the pretrial motions put by the managers on the part of the House should be decided by the full Senate rather than by this committee?

Mr. RODINO. That is correct, because the delegation of authority in the resolution setting up this committee only provided for you to receive evidence and then be able to rule on evidentiary matters.

The CHAIRMAN. We will be getting to that.

Senator GORE. Yes.

Mr. RODINO. Beyond that, as I understood it, and this is the reason why I made certain that my motion went directly to the question as to whether or not you might just hear the motions, but the Senate should, in my judgment, hear the motions to decide them.

Senator GORE. Thank you, Mr. Chairman.

The CHAIRMAN. Now we will hear from Mr. Goodman, Judge Claiborne's counsel.

As I understand it, Mr. Goodman, you will also be addressing the first three motions.

Mr. GOODMAN. That is correct, Senator.

Mr. Chairman, Honorable Senators, House managers, Mr. Chabraja, Senator Cannon, Mr. Stuhff, ordinarily I am not nervous when I address a group of 12 because that is what I do for a living. But today I am in a different setting. I feel as though——

The CHAIRMAN. Under those circumstances, Mr. Goodman, you usually have a sheriff to keep them under control.

Mr. GOODMAN. That is correct.

I feel that I am taking part in a piece of history which touches upon the very essence of what I have learned my entire life to be the function of our system of justice in the United States.

This is not the time for emotional arguments, I understand that, but I believe that you honorable gentlemen should know that my client, who is not present today, who is incarcerated in Montgomery, Alabama, in a Federal institution, is very much here in spirit. He has always said to me over the 20 some odd years that I have represented him that he knows when he is right. What Judge Claiborne means by that in his Arkansas way of expression is that when he takes a position and stands by that position, he believes in the integrity of the position.

I think it is unfair the way he has been characterized by members of the House in the sense that an impression has been levied which would indicate that he is taking advantage of his position and he is taking advantage of the system, and in fact he should not be a judge any more, he should not be drawing his salary any more; in other words, he should give up what the Constitution has guaranteed him when in fact he believes, as he sits in prison today, that he is innocent of any misconduct and any wrongdoing.

Now, the House position is clear on their arguments concerning collateral estoppel and summary judgment, that if in fact Judge Claiborne was denied due process or any procedural remedy which would be available to him before the august United States Senate, then let the Senate hear those defenses. Their position is, and has been, that Judge Claiborne has been afforded all the rights that the due process clause would provide any citizen. And the essence of the charges against Judge Claiborne was that he willfully engaged in criminal activity. Willfully means with a bad purpose. His position was from the beginning, and remains the same consistently, that he did not act willfully as far as his 1979 and 1980 tax returns are concerned.

But what happened at the inception of the criminal justice process was that the trial judge said:

> I am not going to get involved with this garbage that you are presenting to me, Mr. Goodman. I do not want to hear about government misconduct. What is the relevance of that as far as Judge Claiborne is concerned?

And we took the position that the very item which the jury had to determine as it related to these two charges was Judge Claiborne's state of mind, his intent, what is known to the law as his mens rea. Did he in fact mean to commit some type of criminal offense?

We were precluded from showing the jury the aura of the community as it related to Judge Claiborne and his confrontation with the Executive Branch of the Government. And Judge Claiborne, by pressing forward with these impeachment proceedings, rather than giving up as it would be so easy to do, takes the position that he has not been given a full opportunity to present his side of the entire panoply of what took place. And he looks to you gentlemen as being his court of last resort—which the Constitution of the United States assures him will be the case, because the Constitution says that the only way that Judge Claiborne can be impeached is if there is a trial by the Senate. And trial does have a time-worn meaning to it; it means a hearing of all of the relevant and material facts.

Now, the trial judge took the position that Judge Claiborne's battle with the Federal authorities was not relevant, was not material. We maintain that upon a presentation to the Senate sitting as the jury as to these charges, which are contained in the articles which the House drafted, will show that a reasonable juror could not conclude, having all of the facts within that juror's possession, that Judge Claiborne engaged in willful misconduct.

Judge Claiborne was appointed to the bench in September of 1978. Prior to that time, he had a law practice. And if any of you gentlemen were lawyers at any point in time, you have secretaries, you have law clerks, you have bookkeepers, and you set up a means and a mode by which you conduct your daily financial business. It is very formalized. When he went on the bench, of course he did not have that particular situation. He was receiving checks from the Federal Government, and on occasion he received checks from his former partners in the private practice.

And on the bench, Judge Claiborne was a tough judge. He was a judge who was not shy in expressing the way he felt about acts of misconduct, and he made many enemies, enemies which he made not only on the bench but which he carried with him from his private practice where he was an aggressive defense attorney.

And on April 4, 1980, and no jury ever heard this, a historic event which occurred which has never happened before nor ever happened since when a Federal judge in Las Vegas, Nevada—and there will be proof of this if I am permitted to have a defense to the charges for the first time on behalf of the Judge—a Federal judge authorized United States marshals to enter the office of the Federal Strike Force from the Department of Justice Organized Crime Division and take by way of writ certain cartoons which were placed on the walls which the court said were contumacious, once examining those cartoons, of the entire judicial process because they depicted one judge in Las Vegas, and we only had two at the time, of being a clown, and they depicted Judge Claiborne as being Ayatollah Claiborne. That was on April 4, 1980.

Then on April 9, 1980, the newspapers in Las Vegas, Nevada, published reports that Judge Claiborne, one of the two Federal sitting judges in Las Vegas, was the subject of a grand jury inquiry, that the Department of Justice was inquiring into his activity, that he was being targeted on allegations that he participated in illegal wiretapping before he went to the bench. That was April 9, 1980.

On April 10, 1980, perhaps in a way that a judge might, if he is intemperate, respond, Judge Claiborne called the Strike Force attorneys a bunch of crooks and said he was not going to permit them to run roughshod over citizens of the State of Nevada. And he said that publicly; he was on television. There will be evidence and proof to that effect

Now, that is April 10, 1980. On April 11, 1980, the crucial date of the indictment of which he stands convicted, April 11, 1980 is the day, you will recall, that Judy Ahlstrom, his secretary, delivered, according to her testimony and according to the testimony of J. Wright, a letter with an $8,000 check to the Internal Revenue Service and a W-2 form, the letter stating: I earned from my private practice for the year 1979 some $46,000. That was April 11, 1980.

Now, Judge Claiborne said during the jury trial, when he was not permitted to bring these facts out to the jury, that his mother did not raise no fool. And I agree with that. Because only a fool, only a fool would have tried to, in effect, cheat on their tax return knowing that the Government 2 days before that had initiated an independent investigation of the man. Those are facts that were not brought out before the jury.

The question was raised as to the search and seizure, what would happen to the conviction in fact there was an illegal break-in, and I believe that it was represented that there was nothing taken during that search and seizure which would affect the presentation of the case.

It is our position that if we are able to prove—and I have to say that, in candor, because we have not had the opportunity to do so yet, and we are dealing with gentlemen who are unsavory as far as reputation and character are concerned, who have given us affidavits under oath, subjecting themselves to perjury, that they in fact participated in an illegal break-in of Judge Claiborne's home. If we are able to prove that before the Senate, I would submit that the exclusionary rule in an applicable position as far as the Judiciary was concerned would suppress the very item which led to the conviction of Judge Claiborne, and that is an indication that in fact he earned outside income as a result of his private practice while a lawyer which was not disclosed on his tax returns because he had in his home a booklet called a personal financial diary and that personal financial diary was the subject of a subpoena after, we maintain, the illegal break-in took place, where the public integrity attorney subpoenaed that by that particular description. And I will represent to Your Honors that in 20 years plus of practicing law, I never saw a subpoena and a tax investigation calling for an item with such specificity as a personal financial diary. This is the first and only time, and we maintain it was as a result of the seizure.

The CHAIRMAN. Mr. Goodman, I do not want to interrupt you or in any way limit your argument, but I do not want you either to be carried away by the coincidence that this Committee is composed of 12 members. You will have an opportunity to make an opening statement when we begin our hearing.

I think what would be most helpful, with the concurrence of my colleagues, would be to hear your arguments on these motions so that we can focus very narrowly on them at this point.

Mr. GOODMAN. Thank you.

Mr. Chairman, the reason that I commenced the presentation the way I did was purposeful. I recognize that it was an argumentative style, but what it goes to show is that there were matters which were not brought to the attention of the jury whose verdict you are being asked to adopt by the House managers. In other words, there was not a full airing of all the issues before that body whose finding you are being asked to adopt in toto. And I submit that by that suggestion the House suggests to you that you should abrogate your independent responsibility of judging the credibility of the witnesses, and that will be at issue, and judging the evidence as presented before you at trial in a manner consistent with the type of trial that you believe is relevant and material and coming to a verdict which you are constitutionally bound to come to after hearing all of the evidence.

It is because of that, the fact that without having the opportunity, as Senator Inouye suggested in the 1974 debates about the anticipation of another impeachment back in 1974 about the utilization of television, he commented that it is incumbent upon the triers of fact who are representing their constituents in what is a national trial to be able to ferret out the particular nuance of a statement by a witness, to look at the witness's demeanor, to judge the witness's credibility, and by the suggestion of the House you would be deprived, if you adopt that suggestion, of so doing.

On the doctrine of separation of powers, each branch of Government, as you are well aware, has its own responsibility. The responsibility of the Senate is to decide the trial in an impeachment proceeding. A trial, the writers indicate, bring with it certain responsibilities by the triers of fact. The triers of fact must observe and they must be able to discern whether or not a particular witness is telling the truth, and then apply whatever burden of proof is appropriate in making its decision as to whether or not the party who is bringing the charges has met that burden of proof.

I would submit that at this particular instance the only way that is going to be achieved is if in fact the Senate conducts a trial where they can have the witnesses before it. I would submit further that to have a bare record go forward based on just mere testimony to the Senate for their determination as a body, coupled with argument by both sides, would be inadequate under the circumstances because there will be divergent positions where credibility is in fact at issue.

The primary issue, as I indicated before in response, was framed before the jury in Reno during both trials, the first of which, by the way, with the inclusion of Joe Conforte in the case ended in a mistrial with the jury unable to agree as to any verdict. The second trial, after the prosecution moved to dismiss the Conforte-related counts, the jury in fact found Judge Claiborne guilty of the violations for 1979 and 1980 and——

Senator HEFLIN. Let me interrupt you there. I am sure it is not a matter of record, because it would not be, but is your position as to the number relative to the hung jury? I mean, usually lawyers find out one way or another.

Mr. GOODMAN. Yes, we did.

Senator HEFLIN. Whether it was 11 to 1.

Mr. GOODMAN. Yes.

Senator HEFLIN. Or 6 to 2 or something. What is your position?

Mr. GOODMAN. It is not an official tabulation, but I did go and I made inquiry. On the Conforte-related counts, which are not the subject of this particular situation, it was 11 to 1 for acquittal on one of the counts; on the other Conforte counts, 10 to 2. On the tax counts, and this is where there is a divergence, on the 1979 tax count, we were advised that it was a 6 to 6 split, and on the 1980 tax count a 5 to 7 split. But that is not a matter—I do not believe that is a matter of record.

Senator HEFLIN. I would not think it would be. I just wanted to know your position.

Mr. GOODMAN. That is in fact what took place. But in both trials, Senator Heflin, in both trials there was not the ability of Judge Claiborne to present the defense as to his frame of mind as to why he would not engage in any active deception because he knew that the Federal authorities were after him. In addition, the other reason that that becomes relevant and pertinent, as far as what we characterize as the Federal vendetta against Judge Claiborne, is the way the various witnesses were treated who ended up being witnesses against Judge Claiborne in support of the Government's position.

We maintain that Mr. Wright, who was the tax preparer for the 1979 tax return, in his testimony indicated that he spent over 100 hours in preparation. Many of those hours were with the IRS agent or with the FBI agent in anticipation of his testimony. He would change his position over the lunch hour. To adopt prior testimony, what does the House have to say on the collateral estoppel issue where in the first trial Mr. Wright says that he thinks he received the April 11, 1980, letter, and in the second trial Mr. Wright says: No, I did not get the April 11, 1980, letter.

In the first trial, Mr. Wright suggests that he may have lost or thrown away some material. In the second trial: No, I have never lost or thrown anything away. So what has to be decided by this trier of fact in these proceedings is what Mr. Wright is going to say a third time. Because that is going to be the proof which will be before the trier of fact on the impeachment issue.

We have another interesting situation which militates against the use of the collateral estoppel or summary judgment type action, and that concerns the testimony of Charlotte Travaglia. Charlotte Travaglia was an employee of Jerry Watson who prepared the 1980 tax return. I do not retract from my characterization of the return as being an abomination. When you see the return in evidence, you will be horrified that in fact such a return would be filed with the expectation that it did not raise a red flag and set off firecrackers. It was done in pencil in part; it had arrows on it; it certainly was not a completed return. It certainly was not a return that would suggest willfulness; maybe gross misconduct, but not willfulness.

But where Charlotte Travaglia is important is during the trial the prosecutor on the theory of the case that they were presenting to the jury would have the jury believe that Judge Claiborne did not make full disclosure of $88,500 to his tax preparer and then rely upon that preparer. As they come before you today, they change their theory, if I read their responses correctly. Where the House now says nobody is contesting that Judge Claiborne disclosed $88,500 to his preparer; but now we are saying that he did not have a good faith reliance when the preparer prepared the return.

So I submit to this Committee that those are the pitfalls of collateral estoppel. Those are the pitfalls of summary judgment. On Article III, if there is a reversal, irreparable harm would be done by granting summary judgment. On Articles I and II, with the changing of the facts, with the inability to present a full defense, the jury's verdict would not be the same verdict, I would submit, that will be reached by a trial by the Senate in full.

The VICE CHAIRMAN. Senator Pressler.

Senator PRESSLER. Are you suggesting that we should go back to the very beginning and not consider anything? What would you have us do if we do not pass this motion?

Congressman Hughes laid out a scenario. Is that your scenario? Is that what you foresee?

Mr. GOODMAN. Yes; I believe this: I would hope that, given adequate time, and one of the motions that I am going to make, which I will make later, regarding Judge Claiborne's accessibility to me, I would hope that we will be able to reach a stipulation as far as foundation of many of the documents so we do not have to have custodial type witnesses come forward and testify. But I would also suggest that in order for the proper decision to be made within the appropriate setting, that the House would have to bring forward those witnesses who are the fact witnesses that reflect on the issue of Judge Claiborne's state of mind and the issue of willfulness. And I would anticipate that that would go to both returns, 1979 and 1980. It would then be incumbent upon Judge Claiborne in his defense as the respondent to present evidence of a sufficient nature which would show that he did not have a willful state of mind and therefore should not be found liable or guilty of the charges against him.

Senator PRESSLER. So you would have us not consider any of the findings of the court or, for that matter, the findings of the House?

Mr. GOODMAN. No; I would advocate that you should not, and I would like to cite some authority for that proposition.

I would cite to the committee *United States* v. *Claiborne,* found at 781 Fed 2d, 1325. I believe it is part of the record, the court proceedings, all of the appellate opinions

In that opinion, Judge Ferguson, a respected ninth circuit judge, stated the refusal of the court to rehear this case en banc is lamentable. When the prosecution withholds vital exculpatory information, justice is denied. Rehearing en banc is necessary to correct the substantial curtailment of a defendant's right to discover impeachment material. In that situation he was addressing the fact that we did not get the information concerning Mr. Wright, and we did not get the information concerning Charlotte Travaglia until after the trial.

I would also cite for your consideration *United States* v. *Claiborne* a dissent by another respected jurist, Judge Reinhardt, at 781 Fed 2d, 1327, where he takes the position that he just goes forward and outlines all of the governmental misconduct as it pertains to the judge, and he too, concludes that Judge Claiborne was not afforded all of the due process to which he was entitled. And my position is you should not consider what took place by some prior tribunal because it was not based on concepts of fair play and due process. I think based on the separation of powers you have the authority and you have the opportunity to do a great service to our country, and that is to have an exposition of what took place to a Federal judge who was trying to maintain his independence and his integrity and it was violated. He has not had the opportunity to do so, and it may be because, as Judge Ferguson indicated, the Judiciary may have been concerned that if they reversed the conviction, they would be viewed by the public as defending one of their own rather than fairly applying the law. You do not have that to worry about. You are independent, and that is the purpose of the impeachment proceedings. You make your own decision, and you answer to the Nation because this is a national inquiry.

The CHAIRMAN. The Senator from Arizona.

Senator DECONCINI. I yield.

Senator PRYOR. If you would repeat that first citation?

Mr. GOODMAN. The first cite was *United States* v. *Claiborne* found at 781 Fed 2d 1325, decided December 30, 1985.

Senator PRYOR. I believe that was the second cite you gave. If you would give the first one?

Mr. GOODMAN. The other cite was 781 Fed 2d 1327. That was decided January 30, 1986.

The CHAIRMAN. The Senator from Arizona.

Senator DECONCINI. Mr. Goodman, if this committee decides not to grant the motions of the members of the House and we proceed to a full trial, is it in your intention to attempt to subpoena the Chief Justice of the United States as a witness before us here?

Mr. GOODMAN. I discussed that with Judge Claiborne when we were ordered to have our subpoena request prepared. In an abundance of caution, I listed everybody who even touched the case. The Chief Justice was one of those persons because he in fact appointed various judges to sit on factors concerning the case involving persons who touched Judge Claiborne, in effect.

Senator DECONCINI. So I take from that that your answer is yes?

Mr. GOODMAN. My answer is no, based on my discussion with my client.

Senator DECONCINI. And the second question: Would you request a subpoena for the Director of the FBI, Mr. Webster?

Mr. GOODMAN. Yes, I would.

Senator DECONCINI. And the former Attorney General, Mr. Smith?

Mr. GOODMAN. Yes, I would.

Senator DECONCINI. Thank you.

Mr. GOODMAN. But may I respond further, please? I would like to elaborate on that.

I do not want to be deemed by you to be some runaway, renegade, crazy, criminal lawyer. I may be some of those things, but not all of them. I would suggest that the presiding officer at the Senate certainly has the right to regulate me in the sense that he can say to Mr. Goodman, or Judge Claiborne, or he could say to Mr. Chabraja, the Representatives, the managers, he could say that this is irrelevant, it is immaterial, we do not want to hear it. And that is the end of it. Even if I did subpoena the Chief Justice—which I said I will not—but it is not a situation where irrelevant, immaterial matters would be brought to the attention of the body.

Senator DECONCINI. Thank you.

The CHAIRMAN. The Senator from New Mexico.

Senator BINGAMAN. Mr. Goodman, is it your position that in order for this to be valid, in order for the action of the Senate to be valid, the entire Senate needs to hear all the testimony?

Mr. GOODMAN. My answer is that the entire Senate must have all of the testimony before it. There are certain aspects of the case where it would be unnecessary, for instance, for the Senate to have a custodian testify as to the chain of custody of, let us say, Judge

Claiborne's 1979 tax return. But the Senate would have to have the tax return in front of it in order to make its determination on the issue as to whether or not he is liable or guilty of the offense charged in article I.

Senator BINGAMAN. But as I understand it, in order to judge the credibility of the witnesses, all witnesses other than custodial witnesses, the entire Senate would have to hear all their testimony in order to satisfy the constitutional requirement as you read it?

Mr. GOODMAN. Yes, sir.

The CHAIRMAN. The Senator from Tennessee.

Senator GORE. One of your principal arguments against the pretrial motions of the House is that the exclusionary rule ought to prevent us from taking into consideration evidence presented at the trial. Correct?

Mr. GOODMAN. If in fact I am permitted to litigate in front of the Senate the issue of the search of Judge Claiborne's home, and if in fact the Senate found that Judge Claiborne had his fourth amendment right of privacy violated, I would then argue to the Senate that the Senate should not penalize Judge Claiborne under those circumstances.

Senator GORE. Well, it may be that the Senate will turn down the pretrial motions on other grounds, but it just seems to me that the argument on the exclusionary rule is questionable because the courts may have no other recourse to prevent abuse of the kind which might be found in a trial; whereas, the Senate certainly does.

Second, the public policy underlying the exclusionary rule of preventing abuse is not applicable in the same way because impeachment proceedings are quite rare.

And, third, the result of using the exclusionary rule in a proceeding of this kind would be to tell the American public that a Federal judge who appeared, according to evidence in criminal trial, to be guilty of a felony was going to be allowed to continue sitting on the bench with the title, salary, and perquisites of a Federal judge because of a technicality.

It seems to me those three distinctions ought to prevent the use of the exclusionary rule in an impeachment proceeding.

Mr. GOODMAN. And that, of course, would be one of the arguments, I am sure, when I would attempt to offer the testimony regarding the illegal break-in, which will be made by the House of Representatives. But we are in an area of untested waters. To my knowledge, and I have had to start from scratch as far as impeachment is concerned because there has not been one in 50 years. But from my knowledge, the concept of the search and seizure has never been litigated in front of the Senate. The Senate may very well take the position that the courts did; or that no matter what the consequences, they abhor the practice of the Executive engaging in illegal activity and will not permit the Executive to benefit by it. On the other hand, they may take the position which you presently maintain.

The CHAIRMAN. The Senator from Virginia.

Senator WARNER. If I could direct your attention to the motions which you have filed entitled: "to declare rule XI, rules of the procedure and practice of the Senate in sitting on an impeachment trial as unconstitutional." Is the entire rule unconstitutional? Is the Senate able to delegate any aspect of this proceeding to this committee, in your judgment?

Mr. GOODMAN. My position would be——

The CHAIRMAN. You are going to argue that when we get to that.

Senator WARNER. Well, I will be glad to defer it.

Senator HELFIN. Mr. Chairman.

The CHAIRMAN. Let me see if the Senator from Virginia wants to pursue that at this time.

Senator WARNER. We shall pursue it in an orderly fashion. I thought we were about to get to that point.

Mr. GOODMAN. May I respond?

The CHAIRMAN. Yes.

Mr. GOODMAN. Senator Warner, it was one of the items which was going to be addressed. We have developed a procedure where the House will be going first, and then I will be responding to them.

Senator WARNER. We will wait, then.

The CHAIRMAN. Senator Helfin.

Senator HELFIN. I notice you did not really get into case law on the issue of collateral estoppel as to the proceedings in a criminal case applicable to civil cases. Have you studied and have you researched the area? Is there case law? I have not had an opportunity to study the case law pertaining to this. But can you give us the benefit of what research you have done relative to the general law of collateral estoppel, particularly relative to what other courts have ruled and the precedents relative to the matter pertaining to a criminal case of being used for collateral estoppel in a civil case or a civil proceeding?

Mr. GOODMAN. Yes; if the parties are the same, and if the issues are the same, then the doctrine of collateral estoppel does apply. The cases which have been cited on collateral estoppel, as far as the applicability of the finding of the court to be applied in an administrative-type situation, would suggest that if the issues are exactly the same, then collateral estoppel is an applicable principle.

Those cases, however, seem to address themselves to a situation where the respondent or the defendant in a criminal case entered a guilty plea, and that guilty plea was then utilized as the estoppel area. It was not a situation where all the facts were then adopted as being true and correct. It was the ultimate conclusion. And I think that is the difference in this situation from the situation in the court system.

In other words, in court they take the ultimate finding of guilt, and they say, all right, there is a finding of guilt; you lose your law license.

Interestingly, though, in a situation of Nevada, of all places, there is a case, *In re: Cochran,* which I cited, where and attorney was found guilty of violating failure to file his tax returns, and the bar association moved to take his law license. There was a finding that that was an act which did not involve moral turpitude, did not involve the requisite degree of willfulness, and they did not take his license.

I can see collateral estoppel applying when somebody admits their guilt, but what is being asked for here for the first time is to adopt all of the trial, all of the evidence because of the ultimate finding and have that go in front of the Senate.

Senator **Heflin**. I foresee that a great number of these motions will have to be submitted, at least in my opinion, and stated as a premise for what I want to ask you next about it. I foresee that a great number of motions that have been made will have to be submitted to the entire Senate and that they will be ruled on by the Senate, either separately or in some manner, just like a submission of a judge a lot of times takes a lot of things under submission, a lot of different motions and everything else, and comes out with some type of decree or judgment in the matter.

Based on that idea, that we might not be able to reach a decision on this collateral estoppel, that raises the issue of the criminal case and the evidence taken in the criminal case. If an offer of testimony was made for documentary evidence that the entire transcript of the criminal case, the last criminal case, was made to introduce that evidence in evidence as a document—which I gather would not preclude you from presenting any witness that you legally would be entitled to. Maybe the chairman might rule, if he has the authority, which raises another question.

But what objections would you have to the introduction of the entire transcript of evidence of the trial that was taken in the criminal case? That is not to say that, I assume if it is offered as a document, it would not preclude you from the right of taking other testimony, of having witnesses, or going to the witnesses that have testified in the criminal case, going beyond that, if it is allowable. It may well be that it would be ruled to be allowable or else be submitted anyway.

But what reason would you say that we should not accept as evidence as a document the transcript of evidence of witnesses in the criminal case?

Mr. **Goodman**. My response to that would be that it does not have probative value of a sufficient nature to be received as competent evidence. Now, I am not doubletalking. What I am saying is this: That the testimony, and the example I gave as far as J. Wright was concerned would be indicative of this. If inconsistent between the first trial and the second trial, where he says one thing one time and another thing the other time, what good, what value is there to receive that in evidence? That is the type of issue which is ultimately going to have to be decided by the trier of fact after they judge Wright's demeanor and then weigh his credibility.

Senator **Heflin**. Well, suppose you come back and you offer as your alternate, after that, if that is received in evidence, you offer the transcript or a portion of the transcript of the first trial and it is received in evidence. Eventually this matter, as I foresee it, is going to the full Senate. It is going to be basically a transcript of evidence, if this committee can take testimony.

Mr. **Goodman**. That is right. I find the frailty in that type of procedure because I think at that point in time, and I liken it to the judicial process, the Senate as a full body would be sitting virtually as an appellate court.

Senator **Heflin**. Well, we will say as a chancellor, almost, or as a judge of equity where he receives it and he receives the material, this material, but that, of course, is up to you or to the offerer of evidence, or on the other side to, in effect, point out those distinctions.

Mr. GOODMAN. But the distinctions in and of themselves——

Senator HEFLIN. Or the legalities of it.

Mr. GOODMAN. The distinctions or legalities are not the most relevant or pertinent aspect. The ultimate finding that the Senate is going to have to make is the truth. They are going to have to determine what the truth is.

Senator HEFLIN. Well, we admit that, but is not anything on this usually largely probative?

Mr. GOODMAN. Excuse me?

Senator HEFLIN. Is not almost any of the issue in any of the evidence that was received in the trial or transcript of trial court where they heard the evidence basically probative?

Mr. GOODMAN. It is basically probative, but it may be inconsistent and it is being permitted into evidence as a result of somebody else's rulings. In other words, you would be giving way to the judge's determination.

Senator HEFLIN. Well, you have the right to point that out.

Mr. GOODMAN. I maintain that if that were the system that were utilized, it really would not be timesaving because I read the critique in 1974 as to how the committee is supposed to proceed. And the committee in the critique indicated that you could take evidence and you could receive evidence and then transcripts would be made and they would go to the entire Senate.

However, the last paragraph would suggest that the respondent has the right, No. 1, to cross-examine anybody whose testimony is being offered, and the respondent has the right to call these witnesses.

Senator HEFLIN. Well, you did that at the trial. I will hear your arguments on it, but some of those arguments, you objected to evidence and things there.

Mr. GOODMAN. But we were limited at the trial. The judge would not let us ask questions concerning the Government's motivation and items which would have affected the witness' ability to testify truthfully.

The CHAIRMAN. Mr. Goodman, I do not want to interrupt this colloquy, but I am advised that there is a roll call vote in the House of Representatives now. How much longer do you intend to take in your argument on this motion?

Mr. GOODMAN. Mr. Chairman, as to this issue, I do not have any additional argument other than to answer any questions.

The CHAIRMAN. Do you have any further questions?

Senator HEFLIN. Well, since there is a vote on, I can delay it.

The CHAIRMAN. Now, let me ask the Chairman of the managers from the House what your feeling is about time at this point.

Mr. RODINO. Well, we need time to go over. We have a vote on the drug measure at this time. I think it will take at least 15 minutes.

The CHAIRMAN. We are up to 12:30.

Mr. RODINO. How about 2:30?

The CHAIRMAN. 2:30, I think, is right. We will stand in recess until the hour of 2:30. We will then return to the argument of Motions No. 4 and No. 5.

[Luncheon recess taken at 12:26 p.m.]

The CHAIRMAN. The committee will come to order.

Now, as far as time is concerned, the House, according to our timekeepers, only have 1 minute left. But the Committee will take notice of the fact that we consumed some of that time in questions. And I would hope that we could limit the arguments to perhaps 5 minutes and impose a sort of a 5-minute rule at this point, which would mean that we could within 20 minutes to half an hour——

Mr. RODINO. That would be agreeable to me, Mr. Chairman.

The CHAIRMAN. And we would of course extend the same courtesy to to counsel for the defense, to make some adjustment for the time consumed in questioning.

I would point out to members of the committee that while I do not want to discourage questions, that questions have a certain price that we pay for them.

So we would then recognize Mr. DeWine.

Mr. DEWINE. Thank you very much, Mr. Chairman and members of the committee.

I will be arguing our Motion No. 4. And we are really switching gears here a little bit at this point. No. 4 and No. 5 are what I would categorize as evidentiary motions, motions which are clearly within the confines of the jurisdiction of this committee and that we would ask for you to rule on. I will be arguing No. 4, and Mr. Fish will be arguing No. 5.

Our Motion No. 4 is a very simple motion but, I would maintain, a very important motion. It is important for the precedent that it will set; it is also important because it will determine to a great extent how much time this committee and the Senate will take to consider this particular matter and how long it will take to present the evidence.

Very simply, our Motion No. 4 provides and asks for the Senate to accept as substantive evidence all of the testimony and all of the documents, the exhibits at trial, that were uncontroverted; everything where there was no controversy.

Now, what are we talking about? We are talking about, for the trial lawyers—I know there are many trial lawyers on this panel—the basic chain of evidence. We are talking about someone from the casino who took the check, or someone who can identify the check as that check having been cashed in the casino; someone from the bank, the keeper of the records at the bank, who will identify that particular check the Judge deposited there. We are talking about the keeper of the records from the Internal Revenue Service who will identify yes, this is the 1040 that was filed in 1979; this was the 1040 that was filed in 1980.

We are talking also about Judge Claiborne's former partners or law associates who will testify that, yes, in 1979 or yes, in 1980, I issued this check to the judge, or caused this check to be issued to the judge.

All of these matters were not controverted by the judge, and in fact, at the trial—almost every one of the things that we have asked to be admitted, asked that you accept—95 percent of those, the judge on the stand agreed to, acquiesced in on the stand.

Everything that we are asking that you accept as substantive evidence, that the Senate accept as substantive evidence, everything was uncontroverted. The defense did not dispute any of it.

Now, you may say, "Well, why are we here?" Well, we are here because, with all due respect to the other side, we have tried to get a stipulation, and we were not able to get that. So we are coming to you with the items that we would normally think that we would have stipulated, asking you to accept those particular items as given.

Now, what is the advantage of doing this? It is very simple, Mr. Chairman and members of the committee. The example obviously is it sets a correct precedent, I think, for the Senate; that in the future, if you want to follow the precedent, those things that are clearly uncontroverted, no dispute about, you can accept, take that trial transcript.

The other reason clearly is it is going to speed up the deliberations. I have gone through the trial transcript. It is my guess—and it is only a guess—that we will cut in half the time that it will take to present this case to you and to the Senate.

Are there any disadvantages?

I would maintain that the Judge is not prejudiced in any way at all. Well, first of all, No. 1, he does not controvert any of it and never did. No. 2, each one of these witnesses on the witness stand was subject to cross-examination by the same party, by the Judge, by his able counsel. They had the same motive to cross-examine at the jury trial as they would have here. So we do not think there is any problem.

I would also say that if the committee—and it certainly does not have to follow the Federal Rules of Evidence—but I would just observe that it probably, in all likelihood, at least my reading of the rules, falls within an exception to the hearsay rule, 801(d)(2)(b), which basically says that when a party consents and says, "Yes, these facts are true," at a trial, that you can use that evidence later on, and members of the committee may want to refer to that.

I am going to quit at this time, Mr. Chairman, because I think it is very simple. I think it is fair to the Judge to do this. I think it creates a good precedent. I would ask the members of the committee, even though you might think counsel may be able to arrive in the next few days with an agreement on the stipulation, I would submit to you and represent to you that we have not been able to do so thus far. We have made, I think, a good faith effort to do that. It will expedite the trial of this case if you could rule on this as soon as possible so that we would know exactly what witnesses we would have to bring in.

I would also represent to you we are prepared to bring in every, single witness. We are prepared to reprove this entire case if that is the will of the committee and if that is the will of the Senate.

Thank you very much.

The Chairman. Thank you very much, Mr. DeWine.

The committee will now recognize Representative Hamilton Fish.

Mr. Fish. Mr. Chairman and members of the special committee, Motion No. 5 filed on behalf of the House of Representatives requests that the Senate, through this distinguished committee, accept certain prior admissions of Judge Claiborne and his authorized counsel as substantive evidence. The issue here therefore is the trustworthiness and reliability of prior admissions of a party, and does not reach the issue of separation of powers.

Mr. Chairman, since some of the admissions refer to the transcript of the first trial, which I do not believe is in the possession of the committee, I was asked to submit the pages from the transcript of the first trial that are relevant here as requested by your counsel.

The CHAIRMAN. Have they been identified for Mr. Goodman? Have those pages been identified for Mr. Goodman?

[Mr. Fish hands documents to Mr. Goodman.]

Mr. GOODMAN. Excuse me, Mr. Chairman. Without taking your time, I could take care of this after the proceedings.

The CHAIRMAN. Fine.

Proceed.

Mr. FISH. Thank you, Mr. Chairman.

Like Motion 4 which was presented to you, Motion No. 5 is evidentiary and well within rule 11, which states that,

> The evidence so received and the testimony so taken shall be considered to all intents and purposes subject to the right of the Senate to determine competency, relevancy and materiality, as having been received and taken before the Senate.

In Motion No. 5, Mr. Chairman, there are 29 items. There is an incorrect date in Item 16 that I would appreciate having corrected, which says that, "He received a check from James Brown dated August 6, 1978." That date is "August 6, 1980."

Mr. Chairman, commonly admissions of the type listed in Motion No. 5 are treated as a recognized exception to the hearsay rule or, according to some authorities, as simply admissible as direct evidence. All of the admissions listed in this Motion No. 5 were made either by Judge Claiborne, under oath, before a judge and jury, or by his counsel in open court before a judge and jury. It is fundamental to our law that such statements are binding on a party.

Specifically, they concern legal fee income admittedly received by Judge Claiborne and his subsequent disposition of that income; admissions made by Judge Claiborne with respect to the fact that he maintained a financial diary; the accuracy of the entries made in 1979 and 1980 to that diary, and that it was his consistent practice to deposit legal fee income into a bank account.

Also covered by Motion No. 5 would be remarks made by Judge Claiborne's counsel during his opening statement at the second trial on August 2, 1984. Those remarks deal with the inaccuracy of the income tax returns filed in the years 1979 and 1980 and his attempt to narrow the specific issue to be resolved in the second criminal trial.

Again, Mr. Chairman, these remarks are in-court statements made by the judge's attorney. The much-recognized and general legal view is that an attorney is the authorized agent of his client. These in-court statements are presumably made on behalf of his client and binding upon that client.

All of the admissions covered by Motion No. 5 are directly relevant to the issue of whether or not Judge Claiborne under-reported his income in his 1979 and his 1980 tax returns. This, I submit, is the central focus of the Articles of Impeachment presented by the

House of Representatives to the Senate and the central focus of this proceeding.

Under Senate Rule XI, this committee is authorized to make an initial determination as to the admissibility of evidence. Specifically, this committee is authorized to make the same judgment that the full Senate itself could make with respect to the competence, relevance, and materiality of that evidence. The determination you make on Motion 5, of course, will still be subject to the right of the full Senate to make a final determination as to its competency, relevancy, and materiality.

But I would like to reemphasize that these admissions were made in court by Judge Claiborne or his attorney. These admissions validly could be received as evidence even if they had not been made in court. But here today we do not need to prove out-of-court statements. We have testimony or in-court statements that were heard and transcribed. These statements were made in the course of the trial where Judge Claiborne was sworn to tell the truth.

Mr. Chairman, it would be difficult to find a stronger case for the reliability and trustworthiness of admissions by a party.

I recognize that the Federal Rules of Evidence are not binding on the full Senate or on this committee. However, they do offer helpful guidance as to what types of evidence would be admissible in analagous circumstances. In fact, to accept prior testimony of admissions by a party or by his counsel is wholly consistent with evidenciary standards used in both Federal and State court. Under the Federal Rules of Evidence, specifically Rule 801(d)(2)(a), statements by a party are admissible if they are his own statement, in either his individual or representative capacity.

Federal Rule of Evidence 801(d)(2) is, as you know, an exception to the hearsay rule, an exception that sanctions the admissibility of party admissions. Of course, there also are a number of legal authorities who treat prior admissions of a party as not hearsay, but allow their admissibility quite apart from the exception to the rule.

So it makes no practical difference which legal justifications are utilized; the evidentiary result is the same.

Mr. Chairman, the managers in behalf of the House would have preferred that a large portion of the items contained in this motion be done by stipulation. In August our special counsel submitted such a draft stipulation to Judge Claiborne's counsel. However, on September 3d of this year, counsel for Judge Claiborne informed our special counsel that Judge Claiborne would not consent to the proposed stipulations. A different decision would, of course, have saved this committee considerable time. I respectfully urge this committee to act favorably and grant House Motion No. 5.

The CHAIRMAN. Thank you very much, Representative Fish.

We will now recognize counsel for the defense.

Mr. Goodman, I might say that you have 17 minutes of the original hour still remaining. We will adjust that as necessary to compensate for questions.

Mr. GOODMAN. Thank you, Mr. Chairman. I will be brief.

I would like to advise the Chair as well as members of the committee that it was not until this morning that I received these particular motions, perhaps because of the flight from Las Vegas taking the entire day yesterday, but I am prepared to address these issues.

As far as the Motion No. 4, to accept as substantive evidence certain testimony and documents, I have no objection to that type of testimony by way of transcript being accepted by the Senate for purposes of the trial as long as it is understood that it comes within the purview of the spirit of Rule XI, which would permit Judge Claiborne to call in witnesses to controvert items or to expand on items and not to be limited as a result of the acceptance of the prior testimony as to the chain or documentary-type witnesses.

Of course, we have the prerogative that should the House not call what we consider to be the substantive witnesses, such as Jerry Watson, Charlotte Travaglia, and Jay Wright, then we in no way wanted to waive our opportunity to do so. That would be our position as far as Item No. 4 is concerned.

The reason that there was no stipulation is that a stipulation is accepted as being an agreement between the parties as to the truth of the matters asserted. It would deprive Judge Claiborne of his adversarial position at the time of trial, and that is the reason that he chose not to stipulate.

An example of prior testimony as being the danger of accepting it as being the totality of the testimony concerning a certain witness is found in the testimony of Annette Quintana. Annette Quintana was a prior associate of Judge Claiborne who wrote checks to Judge Claiborne as a result of fees being derived by her after Judge Claiborne went on the bench, of cases where Judge Claiborne had already done the work.

Now, if we were limited by virtue of her testimony at trial coming in, we would be precluded from the all-important testimony where she is prepared to say that she, too, used Jay Wright as her tax preparer, and at the time that she was using Jay Wright, she brought to Jay Wright's attention the fact that she was writing checks of $1,000 increments to Judge Claiborne, which of course would have put Jay Wright on notice, and Jay Wright during his testimony denied having any knowledge of the fact that Judge Claiborne accepted moneys or received moneys from Annette Quintana.

Motion No. 5, the adoptive admission as well as the admission motion on the part of the House of Representatives. It is really not important to us whether or not the House presents Judge Claiborne's prior testimony because one way or the other it could be utilized at the time of the trial before the Senate, since Judge Claiborne will in fact testify. And if it is utilized, it could be utilized for purposes of impeachment, if there is impeachment. Otherwise, it is used for purposes of prior consistent statement. And I believe there will not be any allegation of recent fabrication as the Federal rule if applicable would be applied.

I am concerned, not that I tell a fib every now and then, but the suggestion that my argument to the jury and my opening statement and my co-counsel's agrument and the closing argument to the jury be taken as adoptive admissions on the part of Judge Claiborne. We were not under oath at the time these statements were made. We were limited in our ability to make arguments. And under the circumstances of the particular case, we narrowed the issues.

I believe what the House is going to attempt to do is say that Oscar Goodman on behalf of Judge Claiborne, and therefore binding Judge Claiborne, said the only issue which is relevant and important for purposes of an impeachment trial is to limit the issue as to willfulness of Judge Claiborne and that nothing else is pertinent or material to the Senate's consideration.

Of course, if given a full trial, of which we were deprived in the judicial system before the Senate, then that statement would not in fact be totally accurate. It was made under the circumstances of the limitations of the trial court.

So, with that understanding, we would object to my statements being attributed to Judge Claiborne and have no objection for Judge Claiborne's statements to be utilized during the course of the trial.

The CHAIRMAN. Thank you very much, Mr. Goodman.

The Senator from Alabama.

Senator HEFLIN. Let me ask, you had the issue of saying the reason you could not stipulate because it would be accompanied with some element of or aroma of presumption of truth. But if your stipulation is drawn to the fact that you stipulate certain things, but that there is no presumption of truth or anything else, but the trier of facts will determine the truthfulness, the trier of facts which is the Senate in this instance and individual Senators. It is up to them to make it, which I assume is really what we are doing. I assume that you are saying that some fear of stipulation is based on some presumption of validity to the testimony. I would say that if there is such a danger, that language in the stipulation could be used that would prohibit that presumption.

Mr. GOODMAN. May I address Senator Heflin?

The CHAIRMAN. Surely.

Mr. GOODMAN. Thank you.

Ordinarily, within my limited—my experience in the judicial system, the stipulation is preceded by saying that the parties agree upon the following set of facts, and then the facts are outlined.

Senator HEFLIN. Well, that is a stipulation of a fact. There are all sorts of stipulations. You can stipulate that something can be received or something else. It seems to me that if you have fears of that, then you can put language in it to eliminate your fears. And I just use that to suggest that stipulations can help you, can help your client, certainly in the cost of the litigation, fees, and everything else, and if you can stipulate—the main thing is, I think everybody ought to explore the area of stipulation with reservations and the elimination of any presumptions that would cause you a problem.

Mr. GOODMAN. I appreciate your remarks, of course, and it was my fear as to my experience within the judicial system that drove me away from the stipulations.

If I may take something out of order, though, I would like to request the Chair to consider a proposal that I believe would facilitate situations such as being able to stipulate as to certain facts, and that is as follows. As the Chair is well aware, Judge Claiborne is incarcerated in Alabama. The time for preparation is by necessity short and being utilized to the best of our ability. However, there is a factor of not being able to communicate as well as we would like.

I have discussed the matter with the House of Representatives' counsel, and they have no objection to the position that I am going to ask the Chair to consider, and that is—and I believe that this could expedite the proceedings and would tend to create a condition of fairness—and that is, I would ask the Chair to consider addressing the Bureau of Prisons to see whether or not Judge Claiborne could be given a furlough for purposes of assisting me during the time period that the litigation is taking place in front of the Senate.

This would not be a precedential-setting situation. It has happened many times before where prisoners have postconviction motions taking place, and they are ordered by courts to be able to attend the particular proceeding.

In Judge Claiborne's case, he was a self-commitment to the institution. He certainly does not constitute any type of threat as far as escape, risk, or the like. And I would submit that the trial would go much more smoothly if I had complete access to him.

The CHAIRMAN. Mr. Goodman, this is the second time today you have mentioned the fact that Judge Claiborne is in prison at this moment. But I think the record should reflect that Judge Claiborne was given the opportunity to be present and that he chose not to attend today. Is that not correct?

Mr. GOODMAN. That is absolutely correct.

The CHAIRMAN. We will take under advisement your request, and at the time we act on the rulings, we will make some statement with respect to that request.

Mr. GOODMAN. Thank you very much.

The CHAIRMAN. Mr. Goodman, the next motion to which the committee must turn is Judge Claiborne's motion that the Senate convene as a court of impeachment to dismiss articles of impeachment for failure to state a claim for impeachment.

Do you intend to address that motion?

Mr. GOODMAN. Mr. Chairman and committee members, since we are in many ways in uncharted waters, it gives the representative of the respondent the opportunity to suggest remedies that heretofore have not been litigated in impeachment proceedings.

The first aspect of the motion to dismiss is that the conduct as alleged by the articles of impeachment is not such conduct as was contemplated by the Founding Fathers when they framed the Constitution as being grounds for impeachment.

It is submitted that because of the separation of powers contemplated by the framers that the standard for impeachment of a Federal judge is distinct from the standard of impeachment for the President, Vice President, or other civil officers of the United States because as we know, under article II, section 4, the President, Vice President, and civil officers may be removed on impeachment for conviction of treason, bribery, or other high crimes and misdemeanors.

It is our contention that the Federal judiciary, in order to remain an independent branch, has a different standard, a separate and distinct standard, as far as the ability or the disability to be impeached, and that is that the impeachment process would take place if in fact the judge, who is the sole, lifetime appointment of all the officers which are referred to in the Constitution, is not on good behavior, a separate and distinct standard than that which is applicable to the elected officials and the officials who are appointed for a specific term.

As I indicated, this, to the best of my knowledge, has not been argued specifically in any impeachment proceedings, but there is a suggestion going back to Lord Coke that the good behavior must be intended in matters concerning the office, the judicial office. And that is not too far from what Senator Ervin said in 1974, when he indicated that the behavior, which is impeachable behavior, must be related to the behavior of the office, that there must be some official misconduct. He gave the example when the debates took place regarding the contemplated Presidential impeachment that a President could not be impeached if he walked on the lawn of the Senate if there was an ordinance prohibiting such trespassing, or he could not be impeached for exceeding the speed limit, or he could not even be impeached for hitting somebody with his car and killing that person in violation of the speed limit because it was not an offense which was connected to the office.

Now, our position, of course, is that there is no allegation at this point in time that the behavior of Judge Claiborne in any way was related to misbehavior in his official function as a judge; it was private misbehavior. And we submit that, based on that private conduct, it is not an impeachable offense.

As I indicated, this is an argument which is basically a first impression, but I would submit that it is an argument which should be considered by the Senate.

The next reason that we submit that the articles——

The CHAIRMAN. Would you suspend a moment, Mr. Goodman?

Mr. GOODMAN. Yes.

The CHAIRMAN. Senator Bingaman.

Senator BINGAMAN. Could I just ask a question on that, Mr. Goodman. Is it your position then that if the Senate were to find that Judge Claiborne acted in such an irresponsible manner that we thought it rose to the level—an irresponsible manner in connection with performing his duties—that it rose to the level of misbehavior, that that would be a proper ground for us to impeach or to remove him from office, even though no crime was involved?

Mr. GOODMAN. Yes—with the Chair's permission—yes, as long as the behavior was related to his judicial function.

Senator BINGAMAN. Well, does the fact that Federal judges have a responsibility to preside over tax cases cause some difficulty in terms of his—if we were to determine that he was grossly irresponsible in the filing of his own taxes and thereby was unable to properly carry out the part of his duty that relates to presiding over tax cases, would that be a logical basis for us to remove him from office?

Mr. GOODMAN. Respectfully, I would respond to that by saying that that is beyond your purview as the Senate in determining whether or not he is capable to perform his judicial function, unless you find him guilty or liable for offenses which are directly related to the judicial function.

In other words, it would be like saying could you, assuming you had jurisdiction over a State judge, impeach the State judge for driving under the influence because you did not want him to handle any drunk driving cases. And I would submit that that would not be your function, that that would be the function of a judicial council or the judiciary to regulate their own.

I believe the function of the Senate is to ascertain whether or not Judge Claiborne is guilty of an impeachable offense, and it is our position that the impeachable offense would be that which is related to his conduct as a judge performing the judicial function.

Senator BINGAMAN. Let me follow up 1 minute. I guess you are saying that with regard to things outside of his actual functioning on the bench as a judge, the only thing that would constitute—I mean, any kind of criminal activity he engages in is not an impeachable offense outside of his conduct on the bench.

Mr. GOODMAN. Outside of his conduct on the bench. And I would cite in our brief, I try to give a chronological or historical background as to the type of offenses which were subject to judicial impeachment proceedings in the Senate, and all of the proceedings, stemming back to Judge Pickering in 1803, involve misconduct in the judicial function. The only exception to that is in the last of the impeachments, that of Halsted L. Ritter, where one of the allegations was that he was participating in champertous proceedings brought before him for cash consideration judicially related, practicing law while serving as a Federal judge, judicially related, and then the sixth article against Judge Ritter was preparing and filing false income tax returns.

However, I cannot candidly state to you that he was found guilty or liable, but whatever the finding is in impeachment as to a nonjudicially related function because in Judge Ritter's case, he was convicted of the seventh article, which was an all-encompassing one, and acquitted of the substantive articles.

Senator BINGAMAN. Based on your theory, isn't it really logical to say that there is no need for you to call character witnesses? I mean, his character is not an issue before us, as you say it. Any activity he is involved in, regardless of what that constitutes criminally or how it reflects on his character, it is not relevant to whether he should be impeached and removed from office.

Mr. GOODMAN. Only if you adopt my position. If, of course, you take the position that his credibility is an issue, and his character trait of truth, and honesty, and integrity, and veracity is at issue, then, of course, the character witnesses would be relevant and material to the proceedings.

The CHAIRMAN. The Senator from Tennessee.

Senator GORE. Mr. Goodman, on this same point, is it your position that article II, section 4 does not apply to Judge Claiborne?

Mr. GOODMAN. That is our argument, yes, that Judge Claiborne is not a civil officer, which would be the only pigeonhole where he would fit within that particular article.

Senator GORE. On what basis do you reach the conclusion that a Federal judge is not a "civil officer" as the phrase is used in the Constitution?

Mr. GOODMAN. Because I did not find any specific authority which would suggest he was a civil officer. I see a specific section, article III, which provides that judges, both of the Supreme and inferior courts, shall hold their offices during good behavior. I then interpolate the legal proposition that the specific provision takes precedence over the general and come to the conclusion, rightfully or wrongfully, that the specific grounds for impeaching a Federal judge would be for misbehavior.

Senator GORE. Well, leaving aside the point that the managers have cited misbehavior as well, if the Senate concluded that a Federal judge is in fact a "civil officer" within the meaning of that phrase as it is used in the Constitution, then your theory would fall?

Mr. GOODMAN. That is correct, yes.

The other arguments which we have made——

Senator HEFLIN. I want to ask you, does the confirmation language in the Constitution on the confirmation process, as I recall it, applies to the judges of the Supreme Court and then all other officers, or does it say "civil officers" in the confirmation process language in the Constitution?

Mr. GOODMAN. I cannot answer the Senator.

I can just go to the language of the Constitution, the articles themselves, which talk in terms of "civil officers."

If I may, with the Chair's permission, I would like to retreat to the argument concerning the adoption of my statements.

The CHAIRMAN. If I can just respond to the Senator from Alabama, because I think it is important for the record. Article II provides that, "He," the President, "shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate and, by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States * * *."

Senator HEFLIN. There is a distinction between the word "other" and "civil".

Mr. GOODMAN. There is a distinction, that is correct.

Senator HEFLIN Does the word "other" include "civil"?

Mr. GOODMAN. Once again, I think rationally, it would.

The CHAIRMAN. Well, of course, those who are not civil are presumed to be military.

If you will proceed, Mr. Goodman.

Mr. GOODMAN. Yes, I would like to just retreat, if I may, to remarks that I have regarding motion No. 5, which would be the adoption of my statements, and correct something that I said this morning which can show you the danger of what would happen if my statements are attributed to my client.

I indicated this morning in addressing Judge Claiborne's conduct regarding the signing of the 1980 return which was in pencil with arrows that I described as being one of gross misconduct, when in fact, I did not mean that. What I meant was that it was at worst gross negligence. However, if I was not given the opportunity to correct that, and that statement was going to be used against my client as an admission made vicariously by myself, a terrible injustice would have been done, and that is the difficulty in that position when the attorney is not under oath and making those statements under oath.

The third area that I would offer to the committee for consideration is that the offenses of which Judge Claiborne is on trial under articles I and II of the articles of impeachment are not crimes of moral turpitude. I understand that there has been a suggestion that the tax offenses are crimes of moral turpitude. There is authority for the contrary. I cite that in the brief, in Nevada, in the *Cochran* case. It was determined that his conduct was not that of moral turpitude. And as far as Judge Claiborne's present status is concerned, he has not been disbarred by the Supreme Court of Nevada. There is presently an investigation taking place from their perspective as to whether or not his due process rights were violated during the time of the trial which resulted in his conviction in Federal court.

And the last argument goes to the doctrine of multiplicity and duplicity, which is briefed, and the motion to dismiss on the basis that the articles are nonimpeachable; and the duplicity argument is such that articles I and II are really encompassed within article III, and article IV is indefinite in its terms as to what conduct is impeachable—is it misbehavior, or is it in fact the finding of guilt which is in article III, or the violation as charged in articles I and II.

The CHAIRMAN. Thank you very much, Mr. Goodman.

The VICE CHAIRMAN. Mr. Goodman, could I ask you just one question. I take it it is your position that if the Judge had committed murder or rape, and not in doing his official duties, that that is not an impeachable offense; is that correct?

Mr. GOODMAN. That is my position. And my position——

The VICE CHAIRMAN. And did you also contend at one point in these proceedings that he could not be tried criminally until he had been impeached?

Mr. GOODMAN. I contended that and lost that. And he was tried criminally, and he was convicted.

The VICE CHAIRMAN. Well, of course, if your contentions were sustained in both of these aspects, the judge or some civil officer would be able to commit these acts with impunity, because your position is you have at least asserted he cannot be tried criminally until he has been impeached and, of course, you are also asserting that he cannot be impeached because it is not an impeachable offense.

Mr. GOODMAN. No; our position is, respectfully, that he would have to undergo the impeachment process first, before he was tried criminally. He would have to be impeached and undergo the impeachment trial.

The law is very, very clear that after an impeachment trial and independent of an impeachment trial, that the criminal justice system could go into effect, and that is in fact what happened. It was just reversed from what took place in the Claiborne situation.

The CHAIRMAN. Thank you, Mr. Goodman.

Representative Kastenmeier, do you wish to respond?

I do not have to remind you that the House is in overtime.

Mr. KASTENMEIER. I realize that, Mr. Chairman.

The CHAIRMAN. It is not altogether your own responsibility.

Mr. KASTENMEIER. Thank you, Mr. Chairman, members of the special committee. I appear briefly before you in opposition to the

Representative Kastenmeier, do you wish to respond?

I do not have to remind you that the House is in overtime.

Mr. **Kastenmeier**. I realize that, Mr. Chairman.

The **Chairman**. It is not altogether your own responsibility.

Mr. **Kastenmeier**. Thank you, Mr. Chairman, members of the special committee. I appear briefly before you in opposition to the motion to dismiss articles of impeachment for failure to state impeachable offenses.

I commend to you the legal analysis before you, a 12-page legal analysis prepared in answer, specifically, to the allegations just made by counsel for the respondent.

Furthermore, our pretrial statement additionally amplifies our position which will deal with some of these matters. We believe that our responses fully refute the rather, let's say, traditional and predictable attacks on the articles, as offered by respondent.

As chairman of the House committee to which the original matter was referred, and was responsible for the drawing up of the articles, I perhaps should just take a moment to comment, that we indeed were concerned with due process. We were concerned with reasonable expedition, and we were aware of the very special and unique character of the matter before us, involving, as it did, the conduct of the respondent who was convicted in a Federal district court.

The question, therefore, of scope—and the reason I raise that is because we determined, at the outset, no matter how beguiling it might be to, how intriguing, to get into other areas of alleged misconduct on the part of either the respondent, or others. We deliberately avoided doing so.

We were very careful to draw these articles, and we drew them, Mr. Chairman, very narrowly. We concentrated, therefore, on the conduct of Judge Claiborne, particularly as previously reviewed by court and jury.

That led to the four articles. They have been discussed before and I will not discuss them further at this point, but to say that we believe that they are tightly interwoven, that they are limited in scope, and that the view expressed by both the articles, and the House report, that the jury verdict of guilty rendered on August 10, 1984, beyond a reasonable doubt on two counts, and a judgment of conviction are adequate to sustain the four articles.

The respondent has offered four grounds for objecting to the articles. That acts of misbehavior must be official conduct. That high crimes and misdemeanors, the standard of article II, do not in fact apply to Federal judges. That tax fraud is not an offense of moral turpitude and lastly that the articles are multiplicitous.

As a matter of fact, each of these arguments is contrary to established precedent, and, I might add, common sense. As has been pointed out, it would be absurd to conclude that a judge who had committed murder, mayhem, rape, or perhaps espionage in his private life, could not be removed from office by the U.S. Senate.

Nor, indeed, is there any support for the notion that Judge Claiborne's position that Federal judges are not civil officers of the United States, subject to the impeachment clause of article II of the Constitution.

As a matter of fact most of the impeachments of judges have been conducted on that basis.

Further, the reliance on the term "good behavior" as stating a sanction for judges is totally misplaced and virtually all commentators agree that that is directed to affirming the life tenure of judges during good behavior. It is not to set them down, differently, as judicial officers from civil officers. It should not be used in that sense, although it is true, that in addition to reliance on article II, we often do have reliance on conduct or behavior of judicial defendants in these proceedings.

In any event, these positions are not novel, and grounds have been raised in earlier impeachments and disposed of, and I would say that our memorandum well covers these matters.

I will only say, in conclusion, that your sister body, the House of Representatives, has approved these four articles by a vote of 406 to none, and has sent us nine managers here today to support and defend them.

We do in the name of the people of the United States. We ask that you accept these articles, and we ask, Mr. Chairman, that you deny respondent's motion.

The **Chairman**. Thank you very much, Representative Kastenmeier. I have one question, and that is this. Article IV alleges misbehavior and misdemeanor.

It does not allege, in the constitutional phrase, "high crime and misdemeanor," and I wonder what thought went into that particular choice of language.

Mr. **Kastenmeier**. It was in fact meant to be of lesser magnitude in terms of construing the conduct of the respondent. It was intended, incidentally, to suggest to the Federal judiciary of this country, for purposes of precedent, that we were not relying strictly on a jury finding relating to a felony or a conviction. That we still were interested in the demeanor, the behavior of this civil officer, a judicial officer.

And that his actions, having brought disrepute on that institution, were relevant as regarded in a distinct sense. For that reason, we felt article IV to be important, to be at least as important as the others, in stating the whole case against respondent.

The **Chairman**. Senator Bingaman.

Senator **Bingaman**. Mr. Kastenmeier, if we determine that, in our view, at the end of all the testimony, we feel that there has been a failure of proof on the specifics, but that you have proven, or that the testimony has shown a clear evidence of misconduct—whatever that term means—is it your view that we should still remove him, and are able to under the articles of impeachment you have given us?

Mr. **Kastenmeier**. Yes, indeed; while I do in fact support all four articles, in my view, article IV, alone, should, for any reason the other articles fail in your estimation, will be enough on the basis of conduct to remove the respondent.

Senator **Bingaman**. Thank you.

The **Chairman**. No further questions. Then we will turn to the next——

Senator **Heflin**. Let me ask one more there on what he raised. Is that more of an effort to bring under the language of "shall serve subject to good behavior," as opposed to the conviction of misdemeanors, the language which Senator Mathias, the chairman asked, as to your choice of language in that article III?

Mr. **Kastenmeier**. It was not specifically directed to that purpose, but historically, demeanor, in a broader sense, has been relied upon.

Senator **Heflin**. In other words, misdemeanor, and misbehavior have, I think from a historical basis, and certainly in the debates on the adoption of the Constitution, would indicate that they were looked upon as being synonymous.

Mr. **Kastenmeier**. They are in my view.

Senator **Heflin**. Or inclusive, that misbehavior was included within misdemeanor?

Mr. **Kastenmeier**. And I think also the Senator would agree, you find some historic inconsistencies in terms of the use of the words, but generally speaking, they are thought to have the same meaning.

The **Vice Chairman**. Well, your use of the word "misbehavior" then is to be perceived as being within the rubric of the phrase, "high crimes or misdemeanors?"

Mr. **Kastenmeier**. Yes; because it refers to demeanor. In fact we use the term "demeanor," having committed a misdemeanor, rather than a high crime, in article IV. We do not call it a high crime and misdemeanor, or a high crime. We call it a misdemeanor. So we are relying on article II of the Constitution, in terms of citing our article IV.

The **Vice Chairman**. And you are not advancing the proposition that misbehavior is related to the "shall hold office during good behavior" is a separate dimension of an impeachable offense for a judge?

Mr. **Kastenmeier**. We do not rely on that. As I say, I take the position that behavior, in that particular article, is meant really for purposes of tenure. It does state a standard. For purposes of impeachment, I would not rely on that term alone as constituting a grounds for impeachment.

The **Vice Chairman**. There are some commentators who have argued that is a separate grounds, are there not?

Mr. **Kastenmeier**. That is true, and one is able to take that position.

Senator **Heflin**. Well, is there not some argument to the effect that that language of "subject to good behavior," is included within misdemeanor, in the fact that the "mis" and "demeanor," that demeanor there means the same as behavior? There have been arguments to that effect?

Mr. **Kastenmeier**. Yes, and we use the term. As I say, therefore, in our article IV, "is guilty of a misdemeanor" within the scope of high crime and misdemeanor by his misbehavior. It is subsumed in a sense, the term "misbehavior."

The **Chairman**. Thank you very much, Representative Kastenmeier.

We now turn to the next motion, which is the motion in which the Senator from Virginia has exhibited some interest.

That is Judge Claiborne's motion that the Senate convene as a court of impeachment to declare Senate rule XI unconstitutional and to establish a standard of proof beyond a reasonable doubt. Mr. Goodman.

Mr. **Goodman**. Thank you, Mr. Chairman, members of the committee.

The legislative history, or the Senatorial history of rule XI appears to have crystallized back around 1935 when the rule was enacted.

It would appear, from the historians, that the purpose of the ability of the Senate to delegate to a committee a factfinding function was to ease the Senate's ultimate responsibility as far as making a determination as to what or what not could be presented before the Senate as a whole.

Initially, the rule was enacted to set up a committee to go out into the country. That is the expression that is used, and we have to put it within the historical context. In 1935, travel was a lot more difficult. It was a factfinding investigative-type committee that was authorized to go out and bring back a transcript of their findings to the Senate, so the Senate could then conduct a full hearing. Nowhere in the legislative history is there any suggestion that the trial, in any respect or particular, could be delegated to any lesser body than the Senate as a whole? The 100 Senators sitting as triers of fact on the issue as to whether or not an impeachment could take place?

And I alluded to it earlier, but I think that it is important to emphasize it again, is that the reason for the Senate having to be a full body, to take the evidence, is that the Senate is the ultimate trier of fact. The Senate is the body which judges the credibility, and the demeanor, in effect the veracity of the witnesses upon whom the parties allege the articles are based.

Back in 1974, and I keep on referring to that, because that is the most fertile recent source for commentary by your colleagues. It was referenced by the Honorable Frank Moss of Utah, that Senators must consider all information available, weigh it, and test it for veracity.

Now basically, what Senator Moss was saying is that it was their determination. It was up to them to decide whether or not a witness was telling the truth.

And then the Honorable Daniel Inouye of Hawaii, during the same session, indicated that it is important, as far as the public perception as to the fairness and judiciousness of the proceedings, that they perceive the trial to be a trial which affords all the rights to the particular participants. And he comments that the public, because it is a public inquest, be given an opportunity to hear and observe all the evidence presented to the Senate. Now he says this for the public, as far as their ability to weigh the credibility of the witnesses: "Should it be any less for the public than it should be for the ultimate trier of fact?"

He says: "This includes the tone of voice, the physical postures, the hesitations, the anguish, the relaxed smiles as shown by the lawyers, or even by the party himself," should be subject to the analysis and the judgment of the trier of fact.

And if that is done, he says: "that will insure the sincerity of the proceedings." And in his experience he indicates, and I would maintain the same, as a trial lawyer, and what we are analogizing this to is a judicial proceeding, even though it is political in nature. It does have the trappings of a judicial type proceeding. That there is no substitute for direct observation.

And if in fact there is any limitation whatsoever because of the delegability to this committee, then the whole purpose of the Senate being the sole trier of fact would be vitiated.

Senator **Warner**. Mr. Chairman, if I might ask the witness some—this is a subject on which I have concern, and I have here some conflicting views on the subject. I first refer to the Berger, B-e-r-g-e-r, book of impeachment which has been given to each member of the committee.

The **Chairman**. Raoul Berger.

Senator **Warner**. Yes; and on page 171 he states:

> No trace of a reference to a committee of the Lords for hearing of the evidence turned up in my search of impeachment proceedings. The reason appears in a statement made by the manager of the Lords at a conference between members of the Lords and Commons, reported January 18th, 1691.

That—and I quote:

> In the case of impeachments, which are the groans of the people, and carry with them a great supposition of guilt than any other accusation, there, all Lords must judge.

Now I turn to Jefferson's manual, which traces some of the origins of this subject in the U.S. Senate, and on page 296, which is midway in the section dealing with impeachment, it is stated:

> Witnesses. The practice is to swear the witnesses in open house and then examine them there, or a committee may be named who shall examine them in committee, either on interrogatories agreed on in the House, or such as the committee, in their discretion shall demand.

Our committee also has the benefit of a memorandum prepared by the Library of Congress under date September 5, 1986, which I ask be made a part of the record.

The **Chairman**. Without objection.

[The document follows:]

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SEP [illegible]

Dear Michael:

In response to your request, I have prepared a report on the use of committees in the House of Lords for taking evidence during impeachment proceedings.

Please let us know if we may be of further assistance.

Sincerely,

Kersi B. Shroff
Senior Legal Specialist

Enclosure

Mr. Michael Davidson
Senate Legal Counsel
United States Senate
642 Hart Senate Office Building
Washington, D.C. 20510

COPY

TAKING OF EVIDENCE BEFORE A COMMITTEE OF THE HOUSE OF LORDS DURING IMPEACHMENT PROCEEDINGS

Jefferson's Manual of Parliamentary Practice provides the following statement concerning the examination of witnesses during an impeachment in the United States Congress:

> Witnesses. The practice is to swear the witnesses in open House, and then examine them there; or a committee may be named, who shall examine them in committee, either on interrogatories agreed on in the House, or such as the committee in their discretion shall demand. 1/

The Counsel to the United States Senate seeks an opinion concerning whether the provision refers to the taking of evidence by a committee of the House of Lords in Britain, from which practice the impeachment provisions were incorporated in the United States Constitution.

The provision in Jefferson's Manual is directly based on a passage in an old English treatise. 2/ In the pages following the passage, John Selden recites some of the precedents supporting the stated procedure. Of the first modern impeachment 3/ of Sir Giles Mompesson in 1621, Selden states:

> In [the] Parliament of 18 Jac. divers Witnesses were examined in open House in the Causes of Mompesson and the Lord Chancellor, upon Interrogatories agreed on beforehand, and divers at a Committee. 4/

No explanation is given of the House to which the committee belonged, but mention is made of the Earl of Southampton as being a member, thus indicating that it was a committee of the House of Lords. 5/

1/ § 614.

2/ John Selden, Judicature in Parliaments 120 (date unknown).

3/ The first impeachments took place in medieval times, but the practice was suspended from 1459 to 1621 or at least none is mentioned in parliamentary records (J. Stephens, A History of the Criminal Law of England 158 (1883)).

4/ Selden, supra note 2, at 131.

5/ Id.

Earlier in the treatise, Selden refers to the impeachment of Lord Bacon,[6] as follows:

> They accused Francis Lord Viscount St. Alban (at a Conference) of Bribery, and Corruption, in his Office of Chancellor. They delivered no Writing, but a Committee of the Lords having considered the Proofs, and drawn up the Particulars in form of a Charge, they were sent to the Lord Chancellor, and his answer required to each particular.[7]

Selden also cites the case of Alice Peirce accused of the offense of "procuring privately to revoke an Ordination of his Council."[8] According to Selden, "the Lords gave her Day, and in the meantime named a Committee to examine Witnesses."[9] This, however, was not an impeachment as Alice Peirce was accused on behalf of the King, and not by the Commons, as is the case in impeachments.[10]

For a more conclusive account of the use of committees during impeachment in the House of Lords, reference must be made to another great authority on parliamentary proceedings.[11] In 1640, impeachment proceedings were started against Lord Strafford, concerning which Hatsell states:

> On the 18th of November, 1640, the Commons send a message to the Lords, to desire that they would appoint a Committee of a very few, who, "in the presence of some of "this House," might take depositions, and examine witnesses, against Strafford; and that the interrogatories, testimonies, and witnesses might be kept private, until the charge be made full and perfect.[12]

---

[6] Lord Chancellor, also known as Lord Viscount St. Alban.

[7] Selden, *supra* note 2, at 31 (emphasis supplied).

[8] *Id.* at 123.

[9] *Id.*

[10] Stephens, *supra* note 3, at 150. Stephens refers to the accused as "Alice Perrers."

[11] 4 J. Hatsell, Precedents of Proceedings in the House of Commons (1818).

[12] *Id.* at 172

The Lords considered and agreed to what was desired by the Commons.[13]

The following year, the House of Commons sent a message to the House of Lords, concerning a dormant impeachment against the Archbishop of Canterbury, in the following terms:

> That formerly they brought up an Impeachment of High Treason against the archbishop of Canterbury ...; but now they intend to proceed and examine divers witnesses concerning that business; therefore he desired their lordships to appoint a select committee to examine such as the house of commons shall produce; and that to be in the presence of such of their own members as the house shall appoint. In all things else as in the case of the earl of Strafford.' [14]

The request was again agreed to by the Lords.[15]

These examples support the conclusion that while a trial of impeachment was held before the full House of Lords, examination of witnesses was sometimes conducted by a committee of the House in preparation of the trial.

Prepared by
Kersi B. Shroff
Senior Legal Specialist
American-British Law Division
Law Library, Library of Congress
September 1986

13/ Id.

14/ Cobbett's Parliamentary History of England 851 (1807).

15/ Id. A similar account is given in Hatsell, supra note 11, at 184.

Senator **Warner**. It deals with this subject, and the author of this memorandum goes way back into the history of impeachments, and as you know, it is derived from procedures followed in Parliament. And cites some references which, although appear to indicate that there were, in some instances, not all, committees of either the House of Lords, or the House of Commons, the memorandum does cite some precedent.

So my question to you is, to what extent have you had the opportunity to research this in the context of what the Parliament may have done by way of precedent?

Mr. **Goodman**. The opportunity to research it has been limited virtually exclusively to the Raoul Berger treatise, which I have at counsel table, and of course Berger takes the position, which I am urging be adopted, and that is that there is no historical precedent for a complete delegation of function, as far as from the Senate to a committee, as well as certain law review articles which I cite in our brief.

There may be some precedent, as far as the English authorities are concerned, for purposes of gathering evidence, and I would submit that that is the same type of precedent that went into the enactment of rule XI back in 1935. And it was a device utilized to narrow the issues as far as what the Senate wanted to consider, as far as the presentation of the trial.

I believe we have done that independently of a committee by each party filing our statement of facts and our positions. I think that the issues are set out rather clearly as to what our respective postures are and the determination of course is going to be left to the Chair as to how far we can go.

I think this is a marvelous opportunity, and I do not say it selfishly, for Judge Claiborne. I say it as a citizen. I think this is a marvelous opportunity for the American public to see how our system of Government works because there are two diametrically opposed positions here.

The House has taken the position that Judge Claiborne, a Federal judge, has been convicted with all the trappings of due process. Judge Claiborne has taken the position that he has been the victim of a vendetta.

Like many of our citizenry, I am—and I do not say this in a complimentary manner, I say it very sincerely. When I came back before the House to make a presentation on behalf of Judge Claiborne and they were considering the return of the articles, I was not pleasantly surprised; that would be an understatement. I was delighted with the way my Government is working, even though the result resulted in the articles of impeachment.

And I think that if the public saw the way this committee is working and the way the Senate would work, in an effort to get to the truth of these allegations, and to reach the appropriate verdict, be it acquittal, or be it conviction, I think it would be a boost in the arm for the American public as to how their Government works.

Senator **Warner**. If I may continue. There is a footnote to the——

The **Chairman**. Senator Warner, we have a rollcall vote on the floor.

Senator **Warner**. Well, then I will forbear until the Chair——

The CHAIRMAN. Well, do you want to pose that one question and——

Senator WARNER. No, no. I suggest we vote.

Senator HEFLIN. Before we leave, could I pose this for his thought while we are gone. If you would, I want to ask you this in line of what he says. In view of section 5 of article I of the Constitution, which says that each House determines the rules of its proceedings. That is, to whether or not at parliament, or somewhere else, there was any similar situation or, are we dealing with this section V? I think that is an issue.

The CHAIRMAN. All right. Well, on that note, we will take a 15-minute recess.

I will ask the members to come back very promptly so that we can dispose of this today, and Senator Warner will be recognized for his question when we resume.

[Break.].

The CHAIRMAN. A quorum being present the committee will resume. The Chair recognizes the Senator from Virginia to renew his question.

Senator WARNER. I thank you, Mr. Chairman. I shall continue. I must say, Mr. Chairman, and members of the committee, during the course of the vote, one of my colleagues chided me, and said in a spirit of good humor, that if we continue to probe around in the history of parliament, and Jefferson's manual, we are likely to come up with the requirements that we wear robes and powdered wigs. So it may well be that I should curtail this.

Senator HEFLIN. I think you ought to continue. I think it is very appropriate.

Senator PRYOR. I think it was Senator Leahy who suggested the wigs.

Senator WARNER. He said he needed one.

My reference to Jefferson's manual had the following footnote:

> In trials before the Senate, witnesses have always been examined in the open Senate and never by a committee, although such procedure has been suggested.
>
> In the 74th Congress, the Senate amended its rules for impeachment trials to allow the Presiding Officer, upon the order of the Senate, to appoint a committee to receive evidence and take testimony in the trial of any such impeachment.

And that, of course, is the authority under which we act. And then we turn to the fact that under our rules, it says that we apply the rules of the Senate in impeachment processes, and the rules of the Senate allow for the establishment of a committee.

I am wondering, did you examine that citation, and what is your response to that view?

Mr. GOODMAN. I did examine that, and the rule goes on to say that the respondent has the right to subpoena before the Senate, as the trier of fact, any witnesses, and engage in cross examination, the production of documents, et cetera.

I am not sure that the two are inconsistent, if there is not a preclusion from the entire Senate being in a position where they could judge the credibility of the pertinent witnesses.

In other words, if a committee were to be utilized for the function of trying to arrange stipulations, for example; trying to take evidence as far as custodial witnesses, chain witnesses, fine. But as to the trier of fact on the pertinent issues, it must be before the Senate.

I submit that that is nondelegable. The Senate, as a whole, has to be the trier of fact in that situation.

Senator WARNER. What functions, if any, could be performed by this committee in such a manner as not to be at odds with your position?

Mr. GOODMAN. Unfortunately, if I were in a position where I could sit down and seriously try to work out a type of suggested stipulations, and a language which would not harm our position, or derogate our position very little, you would be more or less, with all due respect, as a schoolteacher making sure that the students are doing their homework.

Because other than those kind of witnesses, I respectfully suggest that the Senate, as a whole, would have to hear the testimony of the substantive witnesses as distinct from the custodial witnesses.

Senator WARNER. Should certain Senators have concerns similar to yours in this particular motion, they would then, presumably, look to rule XI, and the last sentence states as follows:

> But nothing herein shall prevent the Senate from sending for any witness and hearing his testimony in open Senate, or by order of the Senate, having the entire trial in open Senate.

Do you interpret that to mean a majority of the Senate, or a single Senator? Or have you looked at that section?

Mr. GOODMAN. As far as I understand the procedure—and of course I am a novice, I do not think any of us were here the last time this took place—was that the Chair would initially make the determination as to the relevance, the materiality of a particular witness, and the only way that could be overruled is if a Senator challenged——

Senator WARNER. Challenged the ruling of the Chair.

Mr. GOODMAN [continuing]. And then it would have to be placed to a vote.

Senator WARNER. Right.

Mr. GOODMAN. And I think that one-fifth of the Senate, under that circumstance, would have to concur with the challenger.

Senator WARNER. Conceivably, then, if you followed that sentence to its conclusion, the Senate could act in a manner to repeat everything that this committee will undertake to do?

Mr. GOODMAN. I would say that that is correct, and I would say that as far as whatever substantive good would come out of this committee, I would hope that the Senate would insist on having those same witnesses appear in front of it as a body of 100 Senators to judge the credibility and demeanor of the various witnesses.

Senator WARNER. My last question, two questions. Do you see any appeal from any aspect of this procedure to, should we say, the Federal court system and primarily, the Supreme Court?

Mr. GOODMAN. Well, this is one of the most fascinating—from a lawyer's point of view it is probably one of the most fascinating questions, and I would have to look to the Berger analysis as well as to the comments of Senator Ervin.

Senator Ervin took the position in 1974, that if in fact there was an item of due process which was being violated by the Senate's procedure, that that could be the type of question that a court would ultimately determine. Prior to *Baker* v. *Carr* and *Powell* v. *McCormack*, it was unheard of, that the Court would ever even consider involving itself within the legislative or political process.

What prompted Berger to write his book in effect I believe was the *Powell* v. *McCormack* case, and of course at that time the suggestion that Justice Douglas was going to be impeached at the instance of subsequent President Ford.

I would say this: my opinion—well, we have some precedent. We have Judge Ritter, I think the last person impeached, going to the courts in an attempt to have the courts order that his salary not be interfered with after his conviction on article VII of the impeachment.

He was summarily dismissed from court. The court said they were not going to interfere with the purely political question.

The scholars, since that time, however, take the position that if in fact due process is violated, and the Senate goes beyond the realms of due process, based on the analogy of Powell, and the analogy of Baker, that the courts could intervene.

My opinion is—and I considered this, in all candor—that if there was an adverse ruling by the committee as to anything that I believed to be crucial to Judge Claiborne, that I would take it to court, and my research indicated that I would have to go to the U.S. District Court, here, in the District of Columbia. But upon further reflection, it is my opinion once again, that I would not get any relief in the court at this juncture, that the only possibility of judicial review would be at the conclusion of the entire proceeding, and that would have to be based on some very serious denial of a due process right to which Judge Claiborne could make claim.

Senator **Warner**. My last question, Mr. Chairman.

In the event this committee, or the Senate, as a whole, is unable to conclude its responsibility under this proceeding before this Congress adjourns, which is now tentatively scheduled early in October, we would have to start de novo again with the new Congress. That is my feeling. Would that be yours?

Mr. **Goodman**. That would be my position as well, based on my whole underlying rationale, that as the trier of fact, it would be incumbent upon the triers, which would be the voting Senators, to make a determination as to which side they in fact believe.

Senator **Warner**. Mr. Chairman, I thank the Chairman.

The **Chairman**. That is a jeopardy in which we stand unless Members of this committee help us to keep a quorum present at all times.

Senator **Gore**. Mr. Chairman.

The **Chairman**. Senator Gore.

Senator **Gore**. Mr. Goodman, two brief questions. First of all, do you agree that the Senate is the sole judge of what evidence is relevant to its determinations in the impeachment proceedings?

Mr. **Goodman**. Assuming that the Senate has jurisdiction over an impeachable situation, the Senate would be the sole judge.

Senator **Gore**. Now, if the Senate, under the rules, retains the right to call any witness before the full Senate for further elaboration upon whatever transcript is taken into consideration initially, and if the Senate is the sole judge of what evidence is relevant, then why is that procedure flawed in your view?

Mr. GOODMAN. Because a Senate which was of the mind to abuse its junction could limit the presentation of the facts to a situation which would in fact deprive the respondent of his rights under the due process clause, which I maintain carry over into the impeachment proceedings.

There are different standards of burdens of proofs, rules of evidence, et cetera, but it is a basic rule of law in this country, that somebody who has a property right, a valued right, before its subject to jeopardy, they are entitled to due process.

I would submit that that also would be applicable in an impeachment proceeding.

Senator GORE. I do not quite understand. Your answer began with the qualifying phrase, "If the Senate was of a mind to abuse its process."

Mr. GOODMAN. Which I am sure it is not.

Senator GORE. So does the rest of the sentence follow?

Mr. GOODMAN. Well, I am saying, in the situation where, if there was a situation where the Senate was not going to afford somebody due process, I believe that that would——

Senator GORE. Well, you are assuming in your response, again, that the full Senate is of a mind to deny your client full process.

Mr. GOODMAN. No, no, to the contrary. No, I am not saying that. I think——

Senator GORE. Well, what are you saying?

Mr. GOODMAN. I am saying the Senate acts in very good faith here by utilizing a rule which was adopted in 1935, by delegating certain responsibilities to the committee, but I am saying that the Constitution of the United States says that my client, or anybody who is subject to impeachment, is entitled to a trial by the Senate.

Senator GORE. But the Senate is going to hear whatever evidence it decides is relevant to the proceeding, and the full Senate retains the right to call any witness for further elaboration upon the transcript that the Senate initially receives as evidence in this proceeding. Correct?

Mr. GOODMAN. That is correct.

Senator GORE. Well, then, how is that——

Senator WARNER. Would you yield for a point there. You keep referring to the Senate. It is the Chair, and then subject to a vote of the Senate to overrule the Chair.

Senator GORE. But the end result is the same. The Senate has the opportunity to work its will under its procedures. I mean, the end result is the same. This committee operates, initially, through the judgments of the Chair and his gavel.

Senator WARNER. I point out that that could certainly be 51 Senators, or the majority.

The CHAIRMAN. I would just point out, that we will have some opportunity on a bench conference at the end of this proceeding to discuss these points among ourselves. If we could hear from the——

Senator WARNER. Could I just finish with one last observation? Theoretically, a majority of this committee's seven Senators could control the quantum and type of evidence that would be received. In the Senate it would take a majority.

Senator GORE. Well, we will pursue that according to the recommendations of the chairman, but if I could reiterate the question.

If the full Senate retains the right to call any witness for elaboration upon the transcript initially submitted as evidence, and if the Senate is itself the sole judge of what evidence is relevant to the proceeding, then how can you make the argument that this procedure violates the Constitution?

Mr. GOODMAN. The only basis upon which I make that argument is if the Senate chooses not to call one of the witnesses whose credibility we deem to be crucial, as a witness before the Senate as a whole, accepting the bare record which would be made before the committee.

Senator GORE. But that would be a judgment solely within the discretion of the full Senate. If the full Senate made a determination that the transcript of that witness' testimony was sufficient, in the view of the Senate, to decide whatever matters hinged upon that testimony—if the Senate is the sole judge of what evidence is relevant, and if the full Senate then decided we do not need to hear further elaboration upon this particular transcript, notwithstanding the fact that counsel for the impeached officer requests further elaboration, then it seems to me the constitutional provision would not be violated.

Mr. GOODMAN. I guess it is the way we perceive the role of the trier of fact. I think my position is predicated on the premise that unless the trier of fact hears, and sees, and judges the credibility of a particular witness, whether that witness had testified before the committee and had his words forwarded to the Senate, that would not matter.

Because we take the position, that in order to be a trier of fact within the context of the Constitution, those type of witnesses have to be seen and heard, and their credibility judged.

Senator GORE. Well, I will close on this point, Mr. Chairman.

If that situation arises, it seems to me the Constitution protects your client by giving him, and, through you, and you, the opportunity to argue to each individual Senator, that additional elaboration is needed on that particular evidentiary point.

And if the Senate, if the full Senate decides, after hearing your argument, as provided under the Constitution, that they disagree with your argument, then your protection has been granted and the Senate can move forward, free of any fear of violating the Constitution itself.

Mr. GOODMAN. If in fact the Senate disagrees with my position, that I say Jay Wright has to come before you so you can judge his credibility, and they say no, we do not want to hear him because we have his prior testimony and we have his testimony in front of the committee, at that point in time I believe that the Senators are not fulfilling their function as is constitutionally mandated.

Because in order to be a trier of fact they have to be in a position where they can judge the credibility of the witnesses.

Senator GORE. Well, does your view then mean that the Senate is obligated to hear, at length, every single witness that you suggest the Senate hear?

Mr. GOODMAN. No; only those witnesses whose testimony is relevant and material to the ultimate factfinding process.

Senator GORE. So, as counsel for the impeached officer, you find a constitutional right to compel the Senate to hear the testimony of each and every witness that you suggest is offering testimony relevant to the issues you have just described?

Mr. GOODMAN. Every witness whose testimony a trier of fact would have to judge—I do not want to end the sentence with a preposition—but the credibility of.

Senator GORE. Well, that gives you quite some power over the Senate.

Mr. GOODMAN. It does not really because the Chair could say that I am wrong.

Senator GORE. I have completed the line of questioning.

The CHAIRMAN. I have just one very brief question.

Do you want to say anything on the question of standard of proof?

Mr. GOODMAN. Very briefly.

The CHAIRMAN. Very briefly. We are way overtime.

Mr. GOODMAN. I understand, and I appreciate the opportunity to say it.

I would suggest for your review the statements of various Senators who are well respected by history as to their position concerning the burden of proof.

Once again, the Honorable Sam Ervin, Jr., during the August 5 and 6, 1974, hearings regarding impeachment, indicated, and, of course, that was a Presidential impeachment being contemplated:

> In a case of this kind, if we are called upon to try an impeachment, I would not hope for conviction on any charge unless I was satisfied beyond a reasonable doubt of the truth of the charges.

The Honorable Strom Thurmond, U.S. Senator from South Carolina, said:

> The penalty of impeachment is severe. It is not a criminal penalty, but I know of no penalty that would be more severe than to remove once again a President from office. And, therefore, I believe that the evidence should be beyond a reasonable doubt.

The well-respected Senator from Mississippi, the Honorable John C. Stennis, said:

> Where any party is charged with an impeachable offense, and is tried by the Senate which is highly important to them, be it a so-called minor official on up to the highest official under our Constitution, then I think the proof required ought to be proof beyond a reasonable doubt. The Nation is a party, and that requires substantial evidence beyond a reasonable doubt.

The CHAIRMAN. Thank you, Mr. Goodman.

Senator GORE. Mr. Chairman, Mr. Chairman, I apologize for belaboring this point. But, very briefly, I think it is a crucial point.

Just a moment ago, counsel suggested that the scenario I described was saved from absurdity by virtue of the fact that the Presiding Officer of the Senate who had denied his request that a particular witness come forward.

Now, if the Presiding—if you retain the right to suggest any witness and you do so, and then the Presiding Officer denies that request, and the full Senate complies with that ruling, is not the constitutionality of the proceeding retained to safeguard it?

Mr. GOODMAN. Respectfully, and I certainly was not trying to give the impression that I felt that anything that was being offered today in any way was absurd.

Senator GORE. No; the hypothetical I posed here of your being able to compel the Senate to hear any witness you suggest. You said no, that would not be the result of my position because the Presiding Officer could simply deny the request. And I think that is an eminently logical position, one that is entirely consistent with my argument that your claim here that the rules are unconstitutional here is invalid.

Mr. GOODMAN. If the request is denied. I take the position if it is an appropriate request and it violates my client's rights to due process——

Senator GORE. And who decides whether it is appropriate?

Mr. GOODMAN. That is the problem. As a——

The CHAIRMAN. Beauty is in the eyes of the beholder in this case, I am afraid.

Senator GORE. In this case, beauty is in the eye of the Senate where evidence is concerned, because the Senate is the sole judge of what evidence is relevant to the proceeding, correct?

Mr. GOODMAN. Yes; but that is the same problem that I had in court where the judge took the position I am not going to let you bring in evidence concerning your client's state of mind because I do not want the jury to hear it. I do not think it is relevant and material.

So what did I do? In the court system you can appeal to a higher court, and as somebody mentioned, 32 judges said I have been wrong so far. But that does not make it right.

And it is my position if somebody is going to be a judge, they should be a good judge. And the only way you could be a good judge, the way I see it from my perspective, is to be able to look at the witness, to be able to question the witness, and to be able to ascertain whether or not the witness is credible. And that cannot, in my humble opinion, be delegated to 12 persons when it is a 100-person tribunal that makes the final decision.

The CHAIRMAN. Thank you very much, Mr. Goodman.

The Chair will recognize Mr. Chabraja who will speak on behalf of the managers of the House.

Mr. CHABRAJA. Mr. Chairman, members of the committee, opposing counsel, I hope I can offer a slightly different perspective on this issue of the constitutionality of rule XI in the assembly of this committee.

I would like to go right back to the provision in the Constitution, article I, section 3, that grants to the Senate the sole power to try all impeachments. Three words in that grant that are of complete significance, first "sole," and second the infinitive of the verb trial, try, sometimes synonomous with to test or to judge.

Of course, the Constitution does not dictate the manner or the conduct of the trial, of the test. The words "to try" are not defined. But there is implicit a very broad grant of discretion to the Senate.

So we are talking on one level about the power of the Senate as granted to it by the framers of the Constitution, and at another level about the exercise, the reasonable exercise of that discretion and power.

Judge Claiborne would have us believe that the words "to try" in the Constitution mean a full evidentiary hearing in the judicial sense, that concept that has been developed over 200 years in our judicial branch. That is the concept that he embraces. Of course, he rejects some other judicial concepts that the House would have you apply in this circumstance.

But the real issue is what is the trial contemplated by the Constitution? It is the belief of the House that, consistent with the sole power to try an impeachment, the Senate has the inherent authority to fashion rules to govern the admissibility of evidence, the scope, the very scope of this proceeding, that which we are grappling with today, and the manner, form, and location in which evidence will be received and, for that matter, the size of the group which receives it.

The House of Representatives has contended earlier today that such authority and power of the Senate also includes the power to recognize and credit the judgment of conviction entered in a full and regular proper proceeding in a sister branch of the Government; also the power in connection with the determination of the scope of these proceedings to preclude the relitigation of certain ultimate facts necessarily determined by the jury in a criminal proceeding. In other words, these matters we are talking about are matters within the discretion of the Senate; those things within its power to do in the application of its notions of fairness and, more importantly, common sense.

There is a ring of truth, you know, and it is a position that I love to argue, to have a full hearing. That is something that Americans embrace. It has the spirit of fairness about it. But how is it more fair 7 years after the events and 2 years after a full trial before a jury when witnesses are 2 years older and more infirm, and memories have eroded, how is it more fair to once again put those same people to the test and decide their credibility? Why is it not more appropriate in the exercise of your discretion to rely on that which has gone before in a regular proceeding in a sister branch?

Certainly, the separation of powers is not a doctrine that causes the Senate to ignore regular proceedings in other branches of the Government.

The VICE CHAIRMAN. Well, that is an argument addressed to motions 2 and 3, is it not, rather than the motion now before us?

Mr. CHABRAJA. It truly is, Senator Sarbanes. They are related.

The issue before you with respect to your own authority in many respects is the very same issue, and it is the one I am pointing up. I think that the Senate very clearly, under its constitutional grant of power, has the broad power to govern the conduct of these proceedings, and it has exercised that power reasonably by convening this committee.

The subject of the burden of proof probably does not merit extended discussion. I should say that simply the criminal burden of proof beyond a reasonable doubt has no place in an impeachment proceeding. The fundamental purpose of an impeachment proceeding is, on the one hand, to protect a judge's interest in his work and, on the other hand, preserve the confidence of the people in public officials and public institutions, protect the public trust.

The criminal burden applies when the interest to be protected, as we all know, is life and liberty. That clearly is not the issue in this proceeding. The framers did not give the Senate the power to impose criminal penalties.

The House submits that if it establishes the allegations of the articles by a preponderance of the evidence, Judge Harry Claiborne should be removed for violating the public trust by committing high crimes and misdemeanors, bringing his office into disrepute.

The VICE CHAIRMAN. At what point would the Senate under the procedure be required to establish a standard of proof? Would not the articles be put to the Senators for their judgment without instruction. In that sense, it is not like a criminal proceeding with instructions from the judge. Would that be correct?

Mr. CHABRAJA. I can answer that question on two levels. The defendant or respondent, in the House, each would prefer the adoption of a standard in advance of the vote. The House urges vigorously, as it has historically, that the preponderance of the evidence is the appropriate standard. It is inconceivable of the House that if the evidence preponderates against a public official that the Senate would retain that official in power.

I think that the respondent would be similarly comforted by knowing the standard as they make their closing arguments to the Senate. On the other hand, the Senate has historically resisted articulating a burden of proof to be applied. And each individual Senator, to the best of our knowledge, from reading the transcripts of the precedents, has voted his or her conscience on the question.

Senator HEFLIN. Let me ask you this: the States in their impeachment process, is there any body of law that would indicate what the standard approved, whether it was a preponderance of clear and convincing or of reasonable doubt in the case law pertaining to State impeachment proceedings?

Mr. CHABRAJA. In our research in the time we have had available, we have looked at State procedures which, in most of the States, are modeled after our Constitution, to determine principally the application of summary principles, such as collateral estoppel and reliance upon conviction. In certain States, there are statutes that enable that.

We have not examined the burden of proof question to our satisfaction, Senator.

Senator HEFLIN. Well, there are a great number of States that have adopted the code of the judiciary removal proceedings or commissions and various other things. And I did not know whether in some of the review, they might have done that, that they might have developed a majority rule or something relative to what the standard or proof has been as to the issue of impeachment.

Many people say that impeachment is a civil proceeding as opposed to a criminal proceeding and, therefore, the measure of proof differs. But, as far as you know, you have not seen any?

Mr. CHABRAJA. Mr. Chairman, the proceeding is clearly not criminal. It may well not be civil, it may be different. It may be constitutional in nature, political in nature. But I do not think we can contend by any stretch of the imagination that it is criminal.

The process in the States differs so materially from State to State. Some of them do, in fact, have commissions that report to the Supreme Court with respect to removal. In other instances, there are trials in the legislature. And I cannot give you a convincing answer with respect to a majority view on burden of proof that might be of assistance to you. We will continue to look on that subject, and if time permits prior to the Senate's deliberations, we would be delighted to file another position paper

The CHAIRMAN. Senator Bingaman.

Senator BINGAMAN. Let me just ask: I am still unclear I understand the difference between the House and the defendant on the burden of proof issue. But could you just tell me what your view is on what has to be shown and what the Senate has to find in order to justify removal? Do you have to show and do we have to find that the defendant is guilty of high crimes and misdemeanors, or do you have to show and do we have to find that the defendant is guilty of misconduct?

Mr. CHABRAJA. We must demonstrate either that he was guilty of high crimes and misdemeanors, which we will have demonstrated if we prove the material allegations of the articles.

By the same token, we can engage in a debate that, in many respects, is academic about whether a judge may continue to occupy his office during good behavior and read into misbehavior the demeanor element of high crimes and misdemeanors.

But let me say, from a historic point of view, the House has contended that both standards apply. There is no reason for us to depart from that today in either event. In either event, the conduct, the aggrieving conduct, must be of a serious nature in the constitutional definition of those terms.

Senator BINGAMAN. So you are saying that the standard could be serious misconduct or something worse? Is that what I understand you to say?

Mr. CHABRAJA. We have alleged that it—I do not think it is a question of what it could be or should be. It is a question of what it is. We have alleged that it is, in fact, a crime of moral turpitude which, at the time our Constitution was framed, was viewed to be a high crime and misdemeanor. Certainly that is misbehavior as well.

Senator BINGAMAN. Now, are we limited by what you have alleged? For example, if we determine that the judge is guilty of serious misconduct in our view, but it is not the same as the specifics of which you have alleged, can we still remove him from office?

Mr. CHABRAJA. Mr. Chairman, the answer to that question is exactly the same as my answer to you with respect to the constitutionality of this committee.

The Constitution charges the Senate with the sole power to try, the sole power to judge and to bring in the judgment. The function of Articles of Impeachment, like a complaint in a civil case or analogous to indictment in a criminal case, is to frame the issues. But in the proceeding before this body the House is not, by its articles, in a position to limit the Senate in the exercise of its judgment. And that is why the House has historically added what is in these Articles of Impeachment, the fourth article, to attempt to respond to the Senate's desire over the years to make judgments that may be outside of the direct scope of the pleadings.

But again I want to bring you back. We are not alleging things outside the scope of the pleadings. We are relying on the conduct that formed the basis of the tax fraud charges that was proven and that, if we must, we will prove again.

The CHAIRMAN. In the fourth article, since you mentioned the fourth article, are you contemplating that there would be a lower level of intent necessary to be proved under the fourth article?

Mr. CHABRAJA. That is not our contemplation and that is not the fashion of the allegations. But I am not going to dictate to the Senate, who has the sole power to judge, your ability to adopt some lesser standards within your power.

Senator WARNER. Counsel, if I could return to this question of delegation, which continues to concern me, as I understand this committee will function by rule of the Chair, or the Chair may submit it to the committee, by which seven votes would then control the decision.

Theoretically, the evidence offered by the defendant could come, and seven members of this committee could continue to reject the admission of that evidence. And as such, it would not be received by the full Senate unless the full Senate then, under rule XI, sought to admit that evidence.

So theoretically, seven members of the Senate could control the admission of evidence proving or disproving the burden of proof that we will eventually establish and control this entire procedure. And that, to me, I could read "sole" in the Constitution as saying, "The Senate shall have the sole power"—"sole" also refers to the article "the," "the Senate".

So I guess the question is: Do you have any concern with the delegation of the power?

Mr. CHABRAJA. Senator Warner, I am concerned, but not disturbed. I think your hypothetical is simply wrong. Even before the entire Senate, theoretically, the presiding officer can exclude the receipt of evidence.

Senator WARNER. He could be overruled.

Mr. CHABRAJA. As this group may be.

Senator WARNER. That is correct. But seven could overrule the Chair.

Mr. CHABRAJA. Here.

Senator WARNER. Here.

Mr. CHABRAJA. But not the entire Senate, when they take up the question of admissibility.

Senator WARNER. True. The Senate may just rule that this Committee acted properly, the seven Senators.

Mr. CHABRAJA. But these things that you are addressing, Senator, seem to me to impact on the desirability or the wisdom of this process that the Senate has adopted and selected—not the question of the Senate's inherent power and authority to do so—much like the matters that were presented this morning. It is clear to me, and we have argued strenuously both in writing and orally, that the Senate has the power to apply these concepts. Whether they choose to do so in the exercise of their inherent power is a matter for the wisdom of the Senate.

The CHAIRMAN. There is a little history connected with this. These very subjects were talked about 50 years ago when the concept of establishing the committee was considered. Senator Norris, who was one of the very respected, distinguished Members of the Senate, was asked about having a committee of 12 people, whether that was a good idea, whether that was not limiting the function of the Senate. And as I understand, Senator Norris said, "What? That is limiting? You would never have 12 people on the floor of the Senate listening to this testimony." So I would offer that.

Senator Sarbanes.

The VICE CHAIRMAN. I wanted briefly to pursue Senator Bingaman's point. The question that would be put to the Senate, assuming how to proceed, the pace, would be on each of the Articles of Impeachment, would it not?

Mr. CHABRAJA. It will.

The VICE CHAIRMAN. The Senate cannot frame its own Article of Impeachment, can it?

Mr. CHABRAJA. I do not think it can. The sole power to impeach resides with the House.

The VICE CHAIRMAN. So the more general response you were giving to Senator Bingaman really related to the framing of the Fourth Article of Impeachment that has been presented to us, is that correct, and not to suggest that you could go outside of the Articles themselves?

Mr. CHABRAJA. My response really relates to the construction of the articles. Once the House brings its Articles of Impeachment, it can assert, as Representative Kastenmeier did so well, what it was that he and his committee intended. the Senate is free to construe those articles and those pleadings in a more expansive manner if it wishes.

The VICE CHAIRMAN. Thank you.

The CHAIRMAN. Senator Bingaman.

Senator BINGAMAN. To ask one additional follow-up, your article IV says that, "Judge Claiborne, by willfully and knowingly falsifying his income on his Federal tax returns for 1979 and 1980 * * *." If we were to determine that he did not willfully and knowingly, or at least that was not proven, but that he did so with gross negligence, he prepared his 1979 and 1980 tax returns in a grossly negligent manner which in our view, the Senate's view, constituted misconduct that should justify removal from office, in your view would that kind of an expansion of your article IV be legal?

Mr. CHABRAJA. I do not think it is fair; no, I do not think so. And I think we would have to have brought an additional article.

Senator BINGAMAN. If you had brought an additional article alleging that he had done so, he had prepared his tax returns in such a grossly negligent manner as to constitute misconduct, would that be a legal basis for us to remove him?

Mr. CHABRAJA. In my personal opinion, such allegations over a period of years could have supported an additional Article of Impeachment in the misconduct area. It is not an article that was brought. It is not proof that we are prepared to go forward on. So in many respects, my answer to your question is academic.

The CHAIRMAN. Senator Pryor has asked for recognition.

Senator PRYOR. Assuming, if we all just assume that we have the power, that it is in the Constitution, that the issue is now before the Senate, that the House has properly done its work in bringing the impeachment over, other than the limitation on time, the lack of time, what is the disadvantage to the Senate in having a de novo trial of this judge?

Mr. CHABRAJA. I think there are several. The first is that which you mention, the time of the legislative body. This probably is the easy case. We can probably try this case de novo in a week, we are all hopeful. You may be faced with a difficult case that will be 6 weeks instead of 1 week. That is something to think about.

But I harken back to what I said a little earlier. This case was tried twice. Mr. Goodman references differences in testimony of the witnesses between the first and the second trials. He views that to be sinister. That is not unusual. Men's recollections differ after short periods of time.

Here, we had witnesses who testified under oath in the summer of 1984. That in itself was four and three years, respectively, after the events about which they testified. We are now 2 years further downstream. We have witnesses who are aged. We have witnesses who have been infirm.

There is nothing in our judicial concepts that supports the constant relitigation of issues. That is why concepts of estoppel and credit have been developed over a 200-year period.

I ask you, Senator, with all due respect, what is to be gained by a trial de novo? Just another bite at the apple for a man who has testified fully twice, has cross-examined all of the witnesses twice, has put them to the rigor of critical examination twice, has had their credibility judged. Why, then, again in front of the Senate, the same witnesses in a different forum, this time standing, this time in front of the television lights?

I do not believe that that is a piece of equipment designed to more accurately ascertain the truth, and that is why we submitted in all earnestness motions with respect to estoppel and credit.

The CHAIRMAN. Thank you very much, Mr. Chabraja.

Mr. CHABRAJA. Thank you.

The CHAIRMAN. We have one more motion to hear.

Mr. Goodman, we recognize you to discuss Judge Claiborne's motion for a bill of particulars and discovery.

Mr. GOODMAN. Thank you, Mr. Chairman.

Members of the committee, the response to the motion for bill of particulars by the House of Representatives is to the effect that they do not intend to offer any evidence in addition to the evidence which they intend to offer on articles I, II, and III.

My fear, of course, is that they could change their mind, and if in fact they change their mind, the bill of particulars which is sought should be answered so we know against what we are defending.

I think today—and I admire Mr. Chabraja for his candor in answer to Senator Bingaman's inquiry; he candidly says that at this point in time we are limited to the four corners of the four articles as stated in the Articles of Impeachment, that cannot go beyond those four corners. When there are allegations of willfulness, that implies a standard of willfulness in accord with the criminal justice process doing an act with bad purpose, with the requisite state of mind, with the necessary criminal intent, and that under any circumstances the House in good faith cannot ask for a finding of guilt on the article with any lesser standard such as gross negligence, for example.

If that is their continued position, then there is no need for the bill of particulars. If in fact they intend to offer other acts of misconduct, or other allegations other than those contained in the first three articles, we believe we are entitled to them.

The next motion is the motion for discovery. It is our position that the Senate has the authority of sitting as a court to order disclosure of the discovery, as we refer to it in the criminal justice process, the statements of various witnesses, grand jury testimony—the very items which have been kept from us to this very day, which have not even been examined, with all due respect, by the judges who were sitting on the appellate panel. They did not open them up, according to one of the judges on his dissent. We would at least ask the Senate to have it within its physical possession, and that if appropriate motions were made and rulings of necessity were reached on the part of the Chair or on the part of the Senate, that they be available to us for purposes of impeachment and for purposes of expanding the record in the quest for truth

The CHAIRMAN. Thank you, Mr. Goodman.

The Chair will recognize Representative Kindness to speak on behalf of the managers for the House.

Mr. KINDNESS. Mr. Chairman and members of the committee, I trust that the committee will consider the opposition of the House of Representatives with respect to the motion for discovery with a view toward the consideration of time as well as the other arguments that will be presented here very promptly to the committee.

First with respect to time, I submit that if the committee determines to grant the motion for discovery, we may very well be here on Halloween, through Thanksgiving, and perhaps Christmas, without the committee having been able to move forward with the determinations that it seeks to make for the U.S. Senate and without being able to fulfill its responsibilities.

None of the materials sought by Judge Claiborne are in the possession of the House of Representatives, and thus Judge Claiborne seeks material that is held solely by nonparties to this proceeding, and I would submit respectfully, materials relating to nonissues in this proceeding. The oversight function of the legislative branch, the oversight function of the U.S. Senate, might very well be the proper forum for consideration of some of the questions that have been presented in behalf of the respondent through his counsel. But whether the pursuit of information with respect to grand jury proceedings, with respect to a strike force or task force of the Department of Justice operating in Nevada is a proper part of the determinations to be made by the U.S. Senate in this impeachment trial. It is subject to quite a bit of question.

Next, I think it is important for the committee to consider whether the respondent would be able to obtain the documents that are generally described in this motion in the normal course. There is no reason, it seems to me, for the Senate to allow Judge Claiborne to utilize an impeachment proceeding to secure documents that he otherwise could not obtain from a Federal grand jury or from the executive branch.

The issues in this impeachment proceeding have been precisely identified. All witnesses may be interviewed directly for information that may be relevant to the issues that are raised by the Articles of Impeachment.

If Joseph Wright or Constance Wright or Charlotte Travaglia, or any other witness, has information that is exculpatory to the cause of Judge Claiborne, the witness may be subpoened for any trial that is deemed necessary by the U.S. Senate.

Moreover, Judge Claiborne already has been provided with prior statements of the witnesses that the House of Representatives will present at trial.

Pursuant to the Jenks Act, title XVIII, United States Code, section 3500, Judge Claiborne was provided at his criminal trial with a broad range of material including grand jury testimony. That grand jury testimony with respect to Joseph Wright, Constance Wright, and every other witness presented by the Government in the trial. These are the same witnesses upon whom the House of Representatives would rely in this impeachment proceeding.

Now, this motion seeks to impel the Senate into breaching the integrity of grand jury proceedings, and I think it is important for the committee to consider for a moment the seriousness of such a transition and movement. Compelling reasons support the principle of grand jury secrecy. In our support of our motion, we cite United States versus Proctor and Gamble, a 1958 case, found at 356 U.S. 677. Since all relevant witnesses remain available to be questioned directly, there is no reason to intrude upon the respected sanctity of the grand jury process. An impeachment proceeding should not be used for that purpose, I respectfully submit.

Also I bring to the attention of the committee the point that the motion is not adequately specific to allow prompt and reasonable response. Judge Claiborne in his motion does not identify for discovery any specific document that is sought or any reason why the information at issue cannot be secured directly from the witnesses involved. The House of Representatives then submits that the Senate should not embark on a charterless expedition, a charterless and time-consuming expedition, in search of evidence of the purported oppression of Judge Claiborne, and certainly not before the Senate determines the scope of the issues to be heard in this matter.

I submit, Mr. Chairman and members of the committee, that the committee does have quite a mixture of considerations to decide upon at this time. I am grateful that the committee will be deciding this one along with the others, because it has a great deal to do with how promptly the committee can proceed with the resolution of its responsibilities.

I would urge that the motion for discovery not be granted.

The **Chairman**. Thank you very much, Mr. Kindness.

Senator Warner.

Senator **Warner**. Mr. Chairman, if I just might say, your reference to Halloween and Christmas and another response to Senator Pryor of why we should not have a de novo trial, and there seems to be almost an undertone of thought here that we have got to find the shortest route and the quickest manner in which to conclude this proceeding. We are stuck with it for better or for worse, and I think we had better proceed in a manner that guarantees due process and the rights of this defendant, and whether we go until Christmas or Halloween, I cannot tell, and I hope not. But I hope there is no undertone here that we are looking at these various motions in a manner to find the easiest way and the quickest way out of this proceeding.

Mr. **Kindness**. Mr. Chairman and Senator Warner, if I created the impression——

Senator **Warner**. I do not think you tried to imply that, but I just picked up bits and pieces of the thread of that thought.

Mr. **Kindness**. If that should be an overriding consideration in the mind of anyone concerned here, I should think that quite regrettable. However, at the same time, I believe that the dignity of the process, the dignity of the U.S. Senate, should not be depreciated or degraded by making this proceeding into something that will be delayed and made a circus. And this is certainly possible if a wide-ranging, nonspecific course of discovery proceeds first to a level, as is quite common, which invites another level of discovery, and beyond that, how far will the Senate be required to decide to go?

The **Chairman**. Thank you very much, Mr. Kindness.

The Chair will recognize Representative Mazzoli.

Mr. **Mazzoli**. Mr. Chairman, Mr. Vice Chairman, and gentlemen of this distinguished panel, particularly my colleague from Kentucky, Senator McConnell, let me say I think it has been pretty well decided in the statement made by the distinguished counsel for Judge Claiborne that his filing of this particular motion for a bill of particulars in article IV was filed as, in a sense, kind of defensively on the premise that there might be some inclination on the part of House managers to go beyond the scope of what we have before us. It is certainly not the intention of House managers to introduce any new piece of evidence on any of the four articles and certainly not on article IV, which of course is a kind of article summing up the first three articles. And so I can assure you that if there were some inclination or desire to go beyond it, we would be the first to say it.

But also, it would be improvident of me not to suggest that with the complete record done at the trial court level, with the complete record in the appellate process both in the ninth circuit and in the Supreme Court, and the extensive pleadings, which we are very proud of our special counsel and our committee staff has filed, it would seem to me that the counsel for Judge Claiborne is well-apprised of all aspects of this case, would have all of the particulars before him; there would be no need for a third bill of particulars. It would seem to me that the facts are laid before us.

So at that stage and particularly in connection with the time constraints that we have been operating under today, I would stop at that point and try to answer any questions if there are any.

The **Chairman**. Thank you very much.

Mr. **Mazzoli**. Thank you, Mr. Chairman.

The **Chairman**. Are there any questions?

[Pause.]

The **Chairman**. If not, it would be the hope of the Chair that we could rule on these motions today so that counsel, who face preparations for the hearings next week, can be fully advised of what the situation will be when we convene on Monday.

So at this point, unless there is some further comment from any member of the committee, I would suggest we take a recess. The committee will retire to room 311, and we will attempt to come to some agreement.

Mr. **Rodino**. Mr. Chairman, before you do, may I ask permission that all managers who have prepared statements be permitted to present them for submission?

The **Chairman**. All prepared statements, yes. Without objection, then, it is so ordered.

[The following was received for the record:]

Prepared Statement of Hon. Peter W. Rodino, U.S. House of Representatives

Mr. Chairman: I present to you this morning a motion asking the Senate to convene as a Court of Impeachment, to hear and resolve two important—and historically significant—pretrial motions previously filed by the House. These Motions, a Motion For Summary Disposition of the Third Article of Impeachment and a Motion to Apply Collateral Estoppel in connection with the first Two Articles, seek to preclude a reexamination of the conviction and the relitigation of certain issues which were actually litigated and necessarily determined in the criminal trial of Judge Claiborne.

The impeachment of Harry E. Claiborne by the House of Representatives brings an impeachment trial to the Senate for the first time in 50 years, and for only the thirteenth time in the history of this nation. However, this impeachment is not simply the thirteenth. Rather, it is the first of its kind. Never before has the Senate heard the impeachment of a federal official previously tried and convicted of a felony in the Courts of this Land. Never before has the Senate heard the impeachment of a man already incarcerated for his crimes.

The House believes that because of the foregoing the Senate is presented with a unique opportunity to determine what a prior conviction means in terms of the Senate's obligation to "try" the impeachment. The Senate has the opportunity to determine what the paramenters of its factual inquiry will be in this and similar cases. Several questions regarding the Senate's power and the proper exercise of its discretion are suggested.

Is the Senate obliged to litigate the tax fraud charges de novo? Alternatively, should the Senate accept the fact of the conviction itself as sufficient evidence of misconduct? Should the Senate preclude the relitigation of facts previously litigated and necessarily determined in the prior criminal proceeding? Is it sufficient if the Senate, instead of relitigating those facts, satisfies itself that there was a substantial factual record in the criminal proceeding, that Judge Claiborne was afforded substantive and procedural due process and that the resulting conviction was not an arbitrary and capricious judgment?

These are the issues presented by the first two Motions filed by the House of Representatives. The Motions delineate the Senate's obligation and sole power to try impeachment issues. The Motions also speak to discretion, implicit in that power, to adopt procedural, evidentiary and substantive rules and doctrines to enable the Senate to reach its judgment in a fair and dispassionate way.

These Motions provide the Senate with an opportunity to shape history. We urge you not to make the mistake—which may prove to be historically costly—of launching into an ill-defined evidentiary hearing without first addressing and resolving these Motions. Whatever the ruling, the Motions are entitled to resolution.

Because this special Committee has been delegated only the authority to receive evidence and rule on evidentiary questions, and therefore cannot decide the issues raised by these substantive Motions, I believe argument on them is properly addressed to the entire Senate. If, however, it will help you in determining whether to convene the Senate in response to this Motion, Managers Hyde and Hughes are prepared to argue the two substantive Motions before this Committee.

I urge you, once again, not to permit these substantive Motions, raising questions of both historical and practical significance, to become moot by a failure to obtain a ruling prior to the commencement of an evidentiary hearing.

We will stand in recess subject to the call of the Chair.

[Whereupon, at 5:10 p.m., the committee recessed, subject to the call of the Chair.]

The CHAIRMAN. The committee will come to order.

The Senate impeachment rule XI empowers the chairman of this committee to exercise all of the powers of the presiding officer of the Senate under the Senate's Impeachment Trial Rules.

Those impeachment rules provide that motions should be made to the presiding officer, the chairman in proceedings before the committee, who may rule on all questions of evidence and incidental questions, and these rulings stand as the judgment of the Senate or here the judgment of the committee unless a member requires a formal vote.

Now, the committee has reviewed the parties' written motions, except, of course, for the managers' motion to exclude evidence of prosecutorial or judicial misconduct which we have been told is being filed today.

Mr. CHABRAJA. It will be filed later this evening, Senator Mathias, or the first thing tomorrow.

The CHAIRMAN. We have heard arguments today and we have discussed in closed session the rulings which will follow

The motions that we have heard today all bear sufficient relationship to questions of evidence including procedures for and the necessity of the receipt of evidence, that it is within the chairman's authority to rule initially on them.

Now, I trust that my rulings will reflect the will of the committee, but as I have indicated, the members of the committee will have the opportunity to ask for a formal vote if they wish to do so, and I have indicated to the members of the committee that I have no personal pride about that matter. They should not be reluctant.

Let me turn first to the motions filed by the managers on behalf of the House of Representatives. First is the managers' summary disposition and collateral estoppel motions. On August 28 of this year, the managers filed three related motions--a motion for summary disposition of the third article of impeachment, motion No. 1; a motion to apply collateral estoppel to the specific issues alleged in the first two articles of impeachment, which is motion No. 2; and a motion that the Senate convene as a court of impeachment to resolve pretrial motions filed by the House of Representatives, motion No. 3.

Judge Claiborne opposes the substantive relief which the managers seek in their first and second motions.

Now, this committee has no jurisdiction to rule on the managers' first and second motions. We simply have no authority to grant judgment on any article of impeachment, and we have no authority to make any findings of fact by estoppel or otherwise.

Indeed, we are foreclosed from even making recommendations whether Judge Claiborne should be found innocent or guilty on any of the articles that have been exhibited against him.

The managers, I think, fully understand this limitation on our authority and they seek rather than a ruling from us on those motions that we desist from our assignment of receiving evidence and refer their motions immediately to the full Senate.

Now, we shall, of course, refer the managers' summary disposition and collateral estoppel motions to the full Senate when we report to the Senate the evidence which is presented to us.

To the extent that the managers third motion should be treated as a request, however, that the committee not receive evidence until the Senate resolves their summary disposition and collateral estoppel motions, I will deny the managers' request for the following reasons:

In doing so, I would state several preliminary concerns about the managers' motions to explain why, in my opinion, the motions are not a basis for disturbing the Senate's careful decision that this committee receive the parties' evidence prior to the Senate's consideration of the legal and factual merits of the articles.

The managers ask the Senate to bind itself to the judgment of the courts of the United States, acting under the authority of article III of the Constitution in a prosecution maintained by executive authority under article II of the Constitution, in an impeachment trial in which the Senate exercises powers and responsibilities conferred solely upon it by article I of the Constitution. Their motions rely heavily on the principles of comity, the conservance of resources, and the avoidance of inconsistent results.

Now, there might be very compelling considerations if the Senate were simply sitting as another court, but the evidence is that the framers of the Constitution deliberately constructed a system which would result, in Alexander Hamilton's phrase expressed in Federalist No. 65, in a "double prosecution."

The constitutional separation of criminal and impeachment proceedings is designed, in the further words of Alexander Hamilton and as was later emphasized by Justice Joseph Story in his Commentaries on the Constitution of the United States, to provide impeached officials of the executive and judicial branches with, "the double security intended them by a double trial."

The Senate has "the sole power to try all impeachments." We have no authority to delegate that responsibility to any other branch. Particularly it must be remembered that the Constitutional Convention specifically rejected the idea of conferring on the Supreme Court the power to try impeachments.

If our obligation to try all impeachments results in the expenditure of our time and resources or creates the possibility that our conclusions may differ from those of the judiciary in exercising our separate constitutional responsibilities, that would be a result of the Framers' design and not of our personal wishes.

Accordingly, we are obliged to continue and not to interrupt our assignment of receiving the evidence which the Senate may later use when it performs its duty as the sole trier of fact in this impeachment.

Now, in recognizing the separation between the constitutional responsibilities of the judicial and legislative branches in this matter, we will be adhering to a principle which the Senate articulated previously in a somewhat related, not a precisely similar, but a related context.

Only 5 years ago, when the Senate Select Committee on Ethics reported a resolution to expel Senator Harrison Williams, the committee grappled with the relationship between its judicial function in an expulsion proceeding and the function of the courts in determining Senator Williams' criminal guilt.

Its report stated, and I am quoting:

> The committee's unanimous recommendations of expulsion reflects its strong conviction that its own determination of the matter and that of the Senate must be made independently of the jury's verdict, [the court's] rulings on due process motions, and indeed, any action which any court may take with regard to Senator Williams' case.

Our responsibility to exercise independent judgment is certainly no less, and indeed may even be greater when the question before us is the removal of an officer of another branch of the Federal Government.

Now, second, the managers' motion to accept as substantive evidence certain testimony and documents. The managers had proposed, as was stated several times here today—had proposed to Judge Claiborne a stipulation to establish principally that Judge Claiborne had received in 1979–80 income for legal services which he had previously rendered but that he had not declared that income.

Judge Claiborne has declined to enter into the stipulation although nothing in his pretrial statement or witness list indicates any intention, as I would read them, to controvert the facts in the proposed stipulation.

The managers have now moved in their motion No. 4 to accept as substantive evidence certain testimony and documents from Judge Claiborne's second trial. This motion is granted so that the Senate may focus on the issue which is in controversy between the managers and Judge Claiborne, namely, whether Judge Claiborne willfully failed to report income.

Now, this grant of this motion is subject to the following:

That counsel for the managers and for Judge Claiborne are directed to make all reasonable efforts to produce for the committee either the originals of the documents of the managers' exhibits or the best copies available.

The clerk of this committee, Mr. Harvey, is available to cooperate with counsel in this endeavor. The originals or the best available copies shall then be substituted in the records which the committee will transmit to the Senate.

The clerk of this committee, upon notifying the parties of any substitutions, is authorized to make the substitutions without further action of the committee.

Finally, Judge Claiborne may offer an objection to any particular item of evidence from his second trial if there is a basis for objection other than the fact that prior testimony or exhibits are being used to establish the truth of the matters asserted.

The admission into evidence of testimony and documents from Judge Claiborne's second trial is not inconsistent with the doubts that I've expressed about the preclusive effect of the jury's verdict.

By receiving testimony and documents from the judicial proceeding in evidence, we are not making findings of fact. We will only be using for our own factfinding purposes sworn testimony taken in the presence of Judge Claiborne and subject to his counsel's examination or cross-examination.

Also, the managers will have to argue before the full Senate that the testimony and documents from the record of the second trial establish relevant facts. Judge Claiborne will be free to argue to the Senate that the prior testimony and the related documents are insufficient to establish those facts, although, as I have indicated, neither his pretrial statement nor his witness list reveals that he has questions about any matters which have not previously been the subject of controversy.

Now, the committee has already requested that the clerk of the United States District Court for the District of Nevada provide a certified copy of the transcript of Judge Claiborne's second trial together with the exhibits which are on file in that court.

The clerk of this committee will mark the transcripts and exhibits as committee exhibits and these exhibits will be admitted into evidence without further action of the committee.

The clerk of this committee will also mark the reported appellate decisions and orders in Judge Claiborne's criminal case collectively as a committee exhibit, and they, too, will be admitted into evidence without further action of the committee.

Third, the managers' motion to accept prior admissions of Judge Claiborne as substantive evidence. The managers have also moved in their motion No. 5 that the committee accept prior admissions of Judge Claiborne as substantive evidence. I will grant their motion, excepting statements of counsel, subject to the following:

Judge Claiborne may submit in writing by September 15 at 9 a.m. when the committee will begin to receive evidence any objection to the receipt of any particular admissions set forth in the managers' motion.

Also many of the cited admissions are based on testimony at Judge Claiborne's first trial. Counsel for the managers should undertake promptly to obtain and to file with the committee a certified copy of Judge Claiborne's full testimony at his first trial so that the Senate will be able to evaluate the claimed admissions in their full context.

The clerk of this committee will, of course, be available to cooperate with counsel for the managers in this regard.

Fourth, the managers' applications for subpoenas. The managers have requested subpoenas for Joseph and Constance Wright. Judge Claiborne has also requested a subpoena for Mr. Wright. Subpoenas for the Wrights have already been issued.

The managers have requested five other subpoenas for the personal attendance of witnesses and five further subpoenas for the production of documents. However, the managers have also stated that these witnesses will not be required if their motion to admit certain prior testimony and exhibits as substantive evidence is granted.

Because I have already granted that motion, the application for these subpoenas will be dismissed as moot.

Fifth, the managers' motion to exclude evidence of prosecutorial and judicial misconduct. In their supplemental pretrial statement, the managers stated that in a forthcoming pleading the House of Representatives formally will move the Senate to exclude from its consideration those matters raised in Judge Claiborne's pretrial statement that are irrelevant and collateral to the proceeding at hand.

The position stated by the managers in their supplemental statement is that the focus of this impeachment proceeding should be the conduct of Judge Claiborne and not the alleged misconduct of either those in the executive branch who prosecuted him or those in the judicial branch who judged him.

We understand that the House motion is being filed today and, of course, counsel for Judge Claiborne should have an opportunity to respond. This is an important question which should be fully briefed by both sides so that the committee will be able to consider it at the outset of the evidentiary proceedings next week.

Now, turning to Judge Claiborne's motions. Having disposed of the motions filed by the managers, I would turn to Judge Claiborne's several motions. Passing over for a moment Judge Claiborne's applications about particular evidentiary matters such as his applications for discovery and subpoenas, I will first consider the motions which relate either to the committee's or to the Senate's authority to continue further in these proceedings.

First, Judge Claiborne's motion that the Senate convene as a court of impeachment to resolve his pretrial motions.

Now, just as the managers have moved that the Senate convene as a court of impeachment to hear several of their pretrial motions, Judge Claiborne asked that the committee halt its proceedings and immediately refer several of his motions to the Senate for consideration.

The four motions which are the subject of this what we might call omnibus motion are, one, Judge Claiborne's motion to declare the Senate Impeachment Rule XI unconstitutional. Two, Judge Claiborne's motion to dismiss the Articles of Impeachment on the ground that they do not state an impeachable offense.

Three, Judge Claiborne's motion for a full and fair impeachment trial before the Senate, and fourth, Judge Claiborne's motion to designate beyond-a-reasonable-doubt as the standard of proof in this impeachment trial.

The committee has no authority to grant or deny the particular motions which are the subject of Judge Claiborne's omnibus motion that the Senate convene as a court of impeachment to hear them.

We shall refer the motions to the Senate, but we shall do it when we report to the Senate the evidence which the parties have presented to us. To the extent that Judge Claiborne's omnibus motion should be treated as a request that the committee desist from receiving evidence until the Senate rules on the particular motions that I have just enumerated, I will deny Judge Claiborne's request and comment only briefly on them.

Judge Claiborne's motion to declare the Senate Impeachment Rule XI unconstitutional. Now, Judge Claiborne asserts that Senate Impeachment Rule XI unconstitutionally delegates to the committee the Senate's power to try impeachment.

So there will be no misperception by the parties or by the public about the role of the committee, I should describe the manner in which the Senate Rule XI preserves the power of the full Senate to be the sole trier of fact and law in an impeachment.

The committee's task under Rule XI is, and I will quote from the rule, "to receive evidence and take testimony," unquote. And then further quoting, "to report to the Senate in writing a certified copy of the transcript of the proceedings and testimony had and given before such committee," end of quote.

The rule then provides that the committee's report shall be received by the Senate and the evidence so received and the testimony so that shall be considered, quoting, "to all intents and purposes * * * as having been taken before the Senate," end of quotation.

The rule subjects these procedures, however, to several important limitations. First, the evidence reported is subject to the right of the Senate to determine competency, relevancy, and materiality.

Second, nothing in the rules shall prevent the Senate from sending for any witness and hearing his testimony in open Senate or by order of the Senate having the entire trial in open Senate. In this manner, the rule preserves the Senate's role as the trier of fact.

The committee is proscribed from making any recommendation on the guilt or innocence of an impeached official. Accordingly the managers and Judge Claiborne may challenge before the full Senate the competency, relevancy and materiality of any evidence received by the committee.

Also, either or both may move the Senate to send for any witness and hear his testimony in open Senate. It will then be up to the full Senate to decide whether the written record compiled by the committee is a sufficient basis for the Senate's performance of its constitutional responsibility to try impeachments or whether it wishes to have any part in the evidence presented directly on the Senate floor.

Judge Claiborne will also be able to make constitutional objections to rule XI after the committee reports to the Senate and to move, in the explicit words of rule XI, for an "order of the Senate having the entire trial in open Senate".

Now, Judge Claiborne's motion to dismiss the Articles of Impeachment on the ground that they fail to state impeachable offenses. Judge Claiborne has moved to dismiss the Articles of Impeachment on the theory that a judge may only be impeached for offenses relating to the judicial function. In the words of his motion, "Offenses not immediately connected with office, such as murder, burglary and robbery, are left to the ordinary course of judicial proceedings, while impeachment was historically limited to misconduct in office."

Now, Judge Claiborne has filed his answer with the Secretary of the Senate, who has transmitted it to the presiding officer. The managers similarly will file their replication with the full Senate. The Senate retains jurisdiction over the Articles of Impeachment and the legal issues that have been presented by the answer, and the committee has no authority to dismiss any Article. Because the committee has no jurisdiction to determine the legal issue which Judge Claiborne presents, we will refer Judge Claiborne's motion to the full Senate together with our report, at the time that we submit our report.

Finally, if the Motion to Dismiss presented a substantial issue, we might be persuaded to ask the Senate to consider it prior to the taking of evidence. But it is my opinion, however, that the impeachment power is not as narrow as Judge Claiborne suggests. There is neither historical nor logical reason to believe that the Framers of the Constitution sought to prohibit the House from impeaching and the Senate from convicting an officer of the United

States who had committed treason or bribery or any other high crime or misdemeanor which is a serious offense against the government of the United States and which indicates that the official is unfit to exercise public responsibilities, but which is an offense which is technically unrelated to the officer's particular job responsibilities.

Now, Judge Claiborne's reply to the managers' Motions for Summary Disposition and Collateral Estoppel. Judge Claiborne's motion for a full and fair impeachment trial before the entire Senate, in addition to adverting to the question of the constitutionality of rule XI, is principally an opposition to the mangers' Motion for Summary Judgment and Collateral Estoppel. As we will be referring the managers' motion to the full Senate when we report to it, we will also refer to the Senate Judge Claiborne's opposition to those motions.

Judge Claiborne's motion to designate beyond a reasonable doubt as the standard of proof in impeachment trials. Judge Claiborne moves that the Senate designate proof beyond a reasonable doubt as the standard which it shall apply in determining the sufficiency of the evidence at his impeachment trial. The committee will not evaluate the evidence which is presented to us and will not make any recommendation to the Senate on the question of whether Judge Claiborne should be removed from office. The committee will have no occasion, therefore, to apply any standard of evidence and will simply refer the motion to the Senate with the committee's report.

Second, Judge Claiborne's Motion for a bill of particulars. Now, Judge Claiborne has moved for a bill of particulars to require the managers to allege with greater particularity the offense described in the Fourth Article of Impeachment. The problem addressed by Judge Claiborne's motion is that the Fourth Article may be thought to make a generalized allegation of misbehavior. An impeached official is entitled to adequate notice of the charges against him in order to know what evidence may be relevant to prove or to disprove the Article. If an actual problem were presented by a lack of definitiveness in the Fourth Article, we would then have to determine whether the full Senate should be asked to take up the question presented by Judge Claiborne's motion prior to the receipt of evidence by the committee.

The managers' pretrial statement—and I would refer in particular to pages 11 and 12—is adequate, however, to inform Judge Claiborne and the Senate of the limitations on the Fourth Article. The managers' statement is that the House is alleging no facts beyond the facts alleged in the first three Articles and that no new evidence will be presented in support of Article IV.

In these circumstances, I have concluded that a bill of particulars is not needed to enable Judge Claiborne to organize the presentation of his evidence to the committee. At the conclusion of the evidentiary proceedings before this committee, counsel for Judge Claiborne is requested to inform us as to whether he believes that there is any need to refer the motion for a bill of particulars to the full Senate.

The managers, however, should file a memorandum with the committee. I would request that you do that as early as possible. A memorandum which discusses whether there is any difference in the legal standards which should be applied to Article IV. We will transmit that memorandum to the Senate with our report.

One matter which the managers should discuss is whether the difference in the wherefore clauses in the various Articles has any legal significance. That clause in Articles I and II alleges misbehavior and high crime and misdemeanor. However, the final clause in Article IV only alleges misbehavior and misdemeanor, but not high crimes or even a high misdemeanor. Judge Claiborne and the Senate should know whether the managers intend to present different legal theories for these Articles.

Third, Judge Claiborne's Motion for Discovery. Judge Claiborne's Motion for Discovery is properly directed to this committee, because it concerns the development of an evidentiary record. The motion seeks assistance in obtaining evidence which may tend to exculpate Judge Claiborne. If the motion could be understood to ask the managers, who are the prosecutors in this impeachment proceeding, to provide to Judge Claiborne any exculpatory material which they possess, then, even though the motion is unprecedented in an impeachment proceeding to my knowledge, there might be some reason to grant it. However, the motion appears to be directed at information possessed by executive and judicial authorities and overlaps, with one exception, subpoenas which Judge Claiborne has requested to establish his allegations of prosecutorial and judicial misconduct. The one exception appears to be Judge Claiborne's request for impeaching and exculpatory evidence in any grand jury testimony of three witnesses, and those three witnesses are Joseph Wright, Constance Wright, and Charlotte Travaglia.

Judge Claiborne's papers do not inform us of the extent to which there is any grand jury testimony by these witnesses, or whether he was able to obtain grand jury testimony as part of his defense at the criminal trial. But we shall keep this matter under consideration.

Now, insofar as the Motion for Discovery concerns evidence of prosecutorial and judicial misconduct, the disposition of the motion will be governed by our disposition of the managers' motions to exclude all such evidence and our related disposition of Judge Claiborne's applications for subpoenas to establish his allegations of the official misconduct of others.

Fourth, Judge Claiborne's applications for subpoenas. Judge Claiborne has applied for 66 subpoenas. The applications for subpoenas and the witness list include four distinct groups of witnesses. One group, the first seven witnesses on Judge Claiborne's application for subpoenas, would be witnesses to the question of whether he had willfully underpaid his taxes. Subpoenas for these witnesses have already been issued.

A second group is offered as character witnesses. Judge Claiborne's counsel has undertaken to inform us whether any subpoenas actually will be required for these witnesses, or whether in fact they will appear voluntarily. I have determined that it would be reasonable to impose some limitation on the number of character witnesses, and I think a reasonable limitation would be no more than 10. So I would direct no more than 10 character witnesses will be heard. I would further say that counsel should organize the presentation of character witnesses so that no more than an hour, or at most an hour and a half, would be consumed by the testimony of character witnesses.

Now, a third group consists of the Chief Justice, the Chief Justice of the Supreme Court of the United States; the three senior appellate judges who comprised the panel which reviewed Judge Claiborne's conviction; and the senior district judge who presided at Judge Claiborne's trial.

Now, even prior to receiving the managers' motion to exclude evidence, there is an evident problem with these applications. Unless the Senate were to decide to give preclusive effect to the disposition of Judge Claiborne's criminal case by the courts, his allegations of bias or other failures in the judicial branch are of no relevance to the impeachment proceeding. We, not members of the judicial branch, we will be the sole judges of fact and law of the issues which are germane to our constitutional responsibilities.

Nevertheless, we will reserve a final determination about these subpoena applications.

Finally, a fourth, and I might say, a large group, consists of persons who allegedly have knowledge of prosecutorial misconduct in Judge Claiborne's case. We will consider the application for these subpoenas together with the managers' motion to exclude evidence of prosecutorial misconduct.

At this time, let me ask the committee whether it wishes to vote on any or all of these rulings.

[Pause.]

The CHAIRMAN. Hearing no such request, the rulings will stand. These are the rulings of the Chair. They will stand as the disposition of the committee in the absence of any request for a vote.

Now, the committee is scheduled to meet every day next week, beginning on Monday, September 15th, from 9 a.m. until 12 p.m. and then from 2 p.m. until 5 p.m. in the afternoon. We understand, of course, that there will have to be some flexibility in that. Members of the House will necessarily be called away from time to time, and members of the committee will necessarily be called away from time to time for other duties. But we will try to be as faithful as possible to that schedule in the hope that we can complete this record by the end of next week.

On Monday, we will hear argument whether the committee should receive evidence of prosecutorial or judicial misconduct. We will then proceed to the opening statements, not to exceed one-half-hour each on each side. The managers will then present evidence in support of their claim that Judge Claiborne acted willfully in failing to report income. Next, Judge Claiborne will present evidence to controvert that claim, and he will thereafter be able to present character witnesses as we have heretofore directed.

Whether the witnesses will be permitted on other matters will of course depend on the ruling that we will make on the motion to exclude.

Is there any comment that any member of the committee would like to make at this time?

[Pause.]

The CHAIRMAN. If not, I would ask the members of the committee to meet very briefly. We have one administrative question to resolve. We can meet very briefly in room 311.

The VICE CHAIRMAN. Senator Sarbanes, says that he thinks we should make it clear, and I hope I did make it sufficiently clear, that it is our intention to be able to complete this record in the week of the 15th, and we seriously request the cooperation of counsel on both sides to make that possible. I think it is not only in the interest of justice; I think it is the interest of all parties to the proceeding.

Chairman Rodino?

Mr. RODINO. Would the Chair make available to us a copy of the Chairman's ruling?

The CHAIRMAN. Of course. We will make it available to both parties.

Do counsel have any further questions or matters that they wish to raise at this point?

Mr. GOODMAN. Mr. Chairman, none other than a procedural matter, or the administrative matter which you are going to take up, as I understand it.

The CHAIRMAN. We will dispose of that, we hope, within the next few minutes.

Mr. CHABRAJA. Mr. Chairman, one minor matter. I understand that the rules of the Senate provide that the opening statement will be made by one manager. I wonder if, now that we are in committee, and we have accounts of Articles dealing with 2 different years, if the evidence to be introduced may be summarized by two different mangers for convenience in the time that we have allotted.

The CHAIRMAN. The Chair will take that under advisement until Monday morning.

We will stand adjourned until Monday morning, September 15th, at 9 a.m., and I will note that at that time the committee will meet not in this room, but in the Senate Caucus Room.

Senator GORE. Mr. Chairman, for the convenience of the managers, it would seem to me that they should be advised as to whether or not they ought to be prepared to proceed on the basis of a single manager. I mean, the convenience would disappear if the ruling came——

The CHAIRMAN. If we can make that decision and if it can be agreed, we will advise them of the result, but I do not think we have to hold the committee in session for that.

Senator GORE. Fine.

(Whereupon, the committee recessed to convene in executive session from 6:23 p.m. to 6:36 p.m.)

[Whereupon, at 6:37 p.m., the committee was adjourned.]

The CHAIRMAN. The committee, of course, is not in session, but I am authorized to make two announcements with respect to two requests that have been laid before us. One is the request of the managers on the part of the House to have more than one spokesman as far as the opening statement is concecned. We have examined the rule, and we find no authority in the rule for us to grant that request. The rule is very specific that it should be a single spokesman. So we have to deny the request of the managers.

With respect to the request of defense counsel that this committee should make a request for the furlough of Judge Claiborne, we have considered that matter carefully. We have the assurance of the Bureau of Prisons that appropriate arrangements will be made and that there will be full opportunity for consultation with counsel, and we have therefore denied the request of counsel that we make that application for a furlough.

United States Senate
WASHINGTON, DC 20510

PRETRIAL MOTIONS RECEIVED BY COMMITTEE

28 August 1986

I. MEMORANDUM FOR THE RECORD

On Thursday, August 28, 1986, at 5:50 PM, the Managers on the part of the House of Representatives on the articles of impeachment against Judge Harry E. Claiborne delivered to the Committee on Impeachment of the United States Senate pre-trial documents consisting of the following items:

- A Notice of Filing specifying the materials being presented;
- A Pre-Trial Statement, including a draft Stipulation; and
- Three Motions, with Memoranda in support of the first two Motions.

Copies of this filing are being distributed to the Senate Impeachment Committee Members and ~~and~~ to their respective Staff Representatives on Friday, August 29, 1986.

Signed:

Anthony L. Harvey

Anthony L. Harvey
Clerk
Committee on Impeachment

I.A

IN THE SENATE OF THE UNITED STATES

SITTING AS A COURT OF IMPEACHMENT

)
)
)
Impeachment of Judge)
Harry E. Claiborne)

NOTICE OF FILING

TO: Mr. Anthony Harvey
Clerk of the Committee on Rules and Administration
United States Senate (SR-318)

PLEASE TAKE NOTICE that on this 28th day of August, 1986, the United States House of Representatives has filed with the Clerk of the Committee on Rules and Administration of the United States Senate, an original and thirty copies of the following:

(a) Pretrial Statement of The House of Representatives;

(b) Motion For Summary Disposition of Third Article of Impeachment (Motion #1);

(c) Memorandum in Support of Motion for Summary Disposition of Third Article of Impeachment;

(d) Motion To Apply Collateral Estoppel To Specific Issues Alleged In The First Two Articles of Impeachment (Motion #2);

(e) Memorandum In Support of Motion To Apply Collateral Estoppel To Specific Issues Alleged In the First Two Articles of Impeachment; and

(f) Motion That Senate Convene, As a Court of Impeachment To Resolve Pretrial Motions Filed By the House of Representatives (Motion #3).

Simultaneous with the filing of the above described documents, the same were served on opposing counsel, Oscar B. Goodman, Esquire, by federal express delivery, and on The Honorable Howard W. Cannon by messenger.

THE UNITED STATES
HOUSE OF REPRESENTATIVES

By Nicholas D. Chabraja
Nicholas D. Chabraja
Special Counsel

Managers of the House of Representatives

Peter W. Rodino, Jr.
Robert W. Kastenmeier
Romano L. Mazzoli
William J. Hughes
Dan Glickman

Hamilton Fish, Jr.
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House Judiciary Committee Staff Participating in Impeachment Trial Preparation

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Alan F. Coffey, Jr., Associate Counsel
Judith Bailey, Counsel
Daniel M. Freeman, Counsel
Gary G. Goldberger, Counsel
Warren S. Grimes, Counsel
Joseph V. Wolfe, Counsel
Jonathan R. Yarowsky, Counsel

I.B

IN THE SENATE OF THE UNITED STATES

Sitting As A Court Of Impeachment

In re	)
	)
	)
	)
IMPEACHMENT OF JUDGE	)
HARRY E. CLAIBORNE	)

PRETRIAL STATEMENT OF THE HOUSE OF REPRESENTATIVES

The House of Representatives, through its Managers and Counsel, respectfully submits this pretrial statement to facilitate the orderly presentation of proof. The statement is organized according to the four Articles of Impeachment presented by the House of Representatives against Judge Harry E. Claiborne.

ARTICLE I

Article I alleges that Judge Claiborne willfully and knowingly made a false statement on his 1979 income tax return, in violation of section 7206(1) of title 26, United States Code. Specifically, the House of Representatives contends (1) that Judge Claiborne received $41,072.93 in legal fee income for 1979; (2) that he reported only $22,332.87 of legal fee income on his 1979 income tax return; and (3) that Judge Claiborne willfully and knowingly failed to report the remaining $18,740.06 in legal fee income.

The House of Representatives has alleged, and respectfully submits, that the elements of Article I are as follows:

> (1) that Judge Claiborne made or subscribed a tax return for 1979 that was incorrect as to a material matter;
>
> (2) that the return contained a written declaration that it was made under the penalties of perjury;
>
> (3) that Judge Claiborne did not believe the return to be true and correct as to every material matter; and
>
> (4) that Judge Claiborne subscribed to the return willfully, not by accident, mistake, or negligence, with the specific intent to violate the law.

See *United States* v. *Marabelles*, 724 F.2d 1374, 1380 (9th Cir. 1984)(stating elements of the crime proscribed by 26 U.S.C. § 7206(1)).

To prove these elements, the House of Representatives intends to submit to the Senate the jury instructions and the verdict in *United States* v. *Harry E. Claiborne*, Dkt. No. CR-R-83-57 (D. Nev.)(trial concluding August 10, 1984), which establish that each of these elements has been determined beyond a reasonable doubt in a fair proceeding in which Judge Claiborne fully participated. Together with this pretrial statement, the House of Representatives has submitted a motion in which the House requests the Senate, consistent with established judicial practice, to apply principles of collateral estoppel to bar

Judge Claiborne from disputing or relitigating those issues that were essential to the verdict and that necessarily have been determined against him in a criminal proceeding in the United States District Court. For the reasons set forth in that motion and accompanying memorandum, there is no reason simply to try again matters that already have been established in a full and fair proceeding.

If the Senate denies the motion, the House of Representatives will establish again the following essential facts, which the House submits adequately will prove, either directly or through reasonable inferences, each of the elements of Article I:

1. In 1979, Judge Claiborne received $41,072.93 in taxable income from his former associates, James Brown and Annette Quintana, pursuant to fee splitting agreements for cases on which Judge Claiborne had worked prior to assuming the bench on September 1, 1978.

2. On or about June 16, 1980, Judge Claiborne filed a personal income tax form 1040 for the 1979 tax year. Schedule C of that return reported income of $22,332.87 from legal fees received in 1979. The remaining $18,740.06 in legal fee income was not reported.

3. The form 1040 for 1979 was signed by Judge Claiborne and contained a written declaration that it was made under the penalties of perjury.

4. Before the form 1040 was filed, Judge Claiborne told his accountant, Mr. Joseph C. Wright, that

his legal fee income for 1979 was $22,332.87 -- the amount actually disclosed on the return. This information was conveyed by Judge Claiborne when he reviewed with Mr. Wright a list of bank deposits that Judge Claiborne earlier (in connection with an application for a mortgage) had provided to Mr. Wright and had identified as legal fee income. The information also was included in a document, in Judge Claiborne's own handwriting, prepared for Mr. Wright's use in completing the 1979 return.

5. Judge Claiborne never gave Mr. Wright the correct, $41,072.93 amount of his legal fee income for 1979.

6. On August 10, 1984, a jury in the United States District Court for the District of Nevada unanimously found beyond a reasonable doubt that Judge Claiborne willfully and knowingly made a false statement on his 1979 income tax return.

It is believed that many of these facts will be established through written stipulation. A draft stipulation between Counsel for the House of Representatives and Counsel for Judge Claiborne is included with this pretrial statement.[1] The stipulation provides for the authentication and admission of a series of documents, including the following:

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[1] In the event that the draft stipulation is not finalized and signed prior to September 4, the House of Representatives respectfully will seek leave to amend its
(Footnote Continued)

1. A true and correct copy of each check for legal fees received by Judge Claiborne in 1979 from James Brown and Annette Quintana.

2. A true and correct copy of Judge Claiborne's 1979 federal income tax return.

3. A true and correct copy of Judge Claiborne's financial disclosure form for 1979, filed pursuant to the Ethics in Government Act.

4. A true and correct copy of a handwritten memorandum written by Judge Claiborne and sent to Mr. Wright on or about March 1, 1980, which contains marginal notations made by Mr. Wright at a later date.

5. A true and correct copy of each of three letters written to financial institutions by Mr. Wright in March and May, 1980, at Judge Claiborne's request.

6. A true and correct copy of both a worksheet prepared by Mr. Wright on or about April 11, 1980 in connection with Judge Claiborne's tax filings, and a tax form 4686 for 1979 for Judge Claiborne.

7. A true and correct copy of a document containing financial information for 1979 written by Judge Claiborne and given to Mr. Wright for use in preparing Judge Claiborne's 1979 federal income tax return.

The House of Representatives also anticipates that the following additional exhibits may be presented: (1) one or more summary charts for tax year 1979, containing information either disclosed in the above exhibits or anticipated in the testimony of witnesses; and (2) entries from a business calendar maintained by Mr. Wright during

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(Footnote Continued)
Pretrial Statement, setting forth its proof of the matters presently included in the stipulation.

1979. These exhibits are not presently available, but will be provided to Counsel for Judge Claiborne before trial, if the House of Representatives decides to present them. Counsel for Judge Claiborne already has in his possession, from the criminal trial, a copy of the relevant entries from Mr. Wright's business calendar.

In addition to the anticipated stipulations and this documentary evidence, the House of Representatives will present, at any trial deemed necessary by the Senate, the live or prior sworn testimony of the following witnesses:

1. Mr. Joseph C. Wright
2. Mrs. Constance Wright

The House of Representatives expects that the testimony of these witnesses will be consistent in all respects with the testimony presented by them in United States v. Harry E. Claiborne, Dkt. No. CR-R-83-57 (D. Nev.)(trial concluding August 10, 1984). Counsel for Judge Claiborne has in his possession a copy of the certified transcript of this testimony.

ARTICLE II

Article II alleges that Judge Claiborne willfully and knowingly made a false statement on his 1980 income tax return, in violation of section 7206(1) of title 26, United States Code. Specifically, the House of Representatives contends (1) that Judge Claiborne received $87,911.83 in legal fee income for 1980; (2) that he did not report any legal fee income on his 1980 tax return; and (3) that Judge

Claiborne willfully and knowingly failed to report the entire $87,911.83 in legal fee income.

The House of Representatives submits that the elements of Article II are identical to the elements of Article I. To prove those elements, the House again intends to submit the jury instructions and verdict from the criminal trial, which demonstrate that each of the elements for 1980 have been established beyond a reasonable doubt. With this pretrial statement, the House of Representatives has submitted a motion urging the Senate to treat as established those elements that already have been proved.

If the Senate denies this motion, the House of Representatives will establish again the following essential facts, which the House submits adequately will prove, either directly or through reasonable inferences, each of the elements of Article II:

1. In 1980, Judge Claiborne received legal fee income of $87,911.83. The money was received in four checks, two from James Brown and one each from George DeRoy and Peter Echeverria.

2. On or about April 13, 1981, Judge Claiborne submitted an application for an extension of time in which to file his 1980 tax return. The application reflected an anticipated tax liability for 1980 of $42,847.96.

3. On or about June 15, 1981, Judge Claiborne filed a personal income tax form 1040 for 1980. The form 1040 did not include a Schedule C for legal fee income, and

did not report any legal fee income for 1980. The form 1040 declared a tax liability of $1,403.00, with an anticipated refund of $20,927.00.

4. The form 1040 for 1980 was signed by Judge Claiborne and contained a written declaration that it was made under the penalties of perjury.

5. On July 24, 1981, the Internal Revenue Service issued Judge Claiborne a refund check for 1980 of $44,256.00.

6. On August 10, 1984, a jury in the United States District Court for the District of Nevada unanimously found beyond a reasonable doubt that Judge Claiborne willfully and knowingly made a false statement on his 1980 income tax return.

Again it is anticipated that many of these facts will be established through written stipulation. A draft stipulation between Counsel for the House of Representatives and Counsel for Judge Claiborne is included with this pretrial statement.[2] The stipulation provides for the authentication and admission of a series of documents, including the following:

> 1. A true and correct copy of each check for legal fees received by Judge Claiborne in 1980 from James Brown, George DeRoy, and Peter Echeverria.

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[2] In the event that the draft stipulation is not finalized and signed prior to September 4, the House of Representatives respectfully will seek leave to amend its (Footnote Continued)

2. A true and correct copy of both a 1980 form 1040-ES for Judge Claiborne and a $2,500 check issued by Judge Claiborne to the Internal Revenue Service on or about April 11, 1980.

3. A true and correct copy of a note handwritten by Judge Claiborne and sent to Frank Rothman in August 1980.

4. A true and correct copy of a letter dated April 6, 1981 from Jerry D. Watson to Judge Claiborne.

5. A true and correct copy of both a 1980 form 4868 for Judge Claiborne and a $20,817.59 check issued by Judge Claiborne to the Internal Revenue Service on or about April 13, 1981.

6. A true and correct copy of Judge Claiborne's 1980 federal income tax return.

The House of Representatives also anticipates that one or more summary charts for tax year 1980 may be presented, which will contain information either disclosed in the above exhibits or anticipated in the testimony of witnesses. Such summary charts are not yet available, but will be provided to Counsel for Judge Claiborne, before trial, if the House of Representatives decides to present them.

In addition to these stipulations and this documentary evidence, the House of Representatives will present, at any trial deemed necessary by the Senate, the live testimony of a properly qualified and independent

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(Footnote Continued)
Pretrial Statement, setting forth its proof of the matters presently included in the stipulation.

expert witness, who will analyze Judge Claiborne's 1980 tax return. The testimony will be similar in certain respects to Mr. Robert N. Dyas' analysis of the 1980 return at the August 1984 trial. The identify of this expert, and a more complete statement of the anticipated nature of the testimony, will be presented to Counsel for Judge Claiborne as soon as possible.

ARTICLE III

Article III alleges the fact of Judge Claiborne's conviction of two felony offenses as an independent and sufficient basis for his removal from office.

In support of this Article, the House of Representatives will establish the following essential facts:

1. On August 10, 1984, in the United States District Court for the District of Nevada, a jury found Judge Claiborne guilty of two counts of willfully filing a false income tax return, in violation of section 7206(1) of title 26, United States Code. United States v. Harry E. Claiborne, Dkt. No. CR-R-83-57.

2. On October 3, 1984, the Honorable Walter E. Hoffman sentenced Judge Claiborne to two years imprisonment for each offense, to be served concurrently, together with a fine of $5000 for each violation.

3. On July 8, 1985, Judge Claiborne's conviction was affirmed by the United States Court of Appeals for the

Ninth Circuit. United States v. Claiborne, 765 F.2d 784 (9th Cir. 1985).

4. On April 21, 1986, the United States Supreme Court denied a petition for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit. Claiborne v. United States, 106 S. Ct. 1636 (1986).

These facts will be established by stipulation or the presentation of certified copies of the pertinent court records.

With this pretrial statement, the House of Representatives has submitted a motion for summary disposition of this Article of Impeachment, and a memorandum in support of its position that these facts provide an independent and sufficient basis for Judge Claiborne's removal from office. No further evidence will be presented in support of Article III.

ARTICLE IV

Article IV alleges that, by virtue of the facts alleged in Articles I, II, and III, Judge Claiborne has betrayed the trust of the people of the United States, reduced confidence in the integrity and impartiality of the judiciary, and thereby brought disrepute on the federal courts and the administration of justice. Since Article IV relies on the allegations set forth in Articles I, II, and III, no new evidence will be presented in support of Article IV.

Respectfully submitted,

THE UNITED STATES
HOUSE OF REPRESENTATIVES

By Nicholas D. Chabraja

Managers of the House of Representatives

Peter W. Rodino, Jr.
Robert W. Kastenmeier
Romano L. Mazzoli
William J. Hughes
Dan Glickman

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Daniel M. Freeman, Counsel
Gary G. Goldberger, Counsel
Warren S. Grimes, Counsel
Joseph V. Wolfe, Counsel
Jonathon R. Yarowsky, Counsel

I.C

8/27/86 DRAFT

IN THE SENATE OF THE UNITED STATES
SITTING AS A COURT OF IMPEACHMENT

In re:)
Impeachment of)
Judge Harry E. Claiborne)

STIPULATIONS

The Managers for the U.S. House of Representatives and Judge Harry E. Claiborne, by and through their respective counsel, stipulate to the following facts and the genuineness and admissibility of the following documents.

Article I

1. In 1979, Judge Claiborne received taxable income from his former associates, Annette Quintana and James Brown, in the amount of $41,073.93 pursuant to fee splitting agreements for cases he had worked on prior to going on the bench on September 1, 1978. This legal fee income was received in the form of 14 checks -- 5 from Annette Quintana and 9 from James Brown as follows:

a. Judge Claiborne received a check from James Brown dated

January 5, 1979 in the amount of $3,381.10, which Judge Claiborne endorsed and deposited to his account at the Pioneer Citizens Bank of Nevada. A true and correct copy of this check is attached hereto as Exhibit A.

b. Judge Claiborne received a check from James Brown dated January 19, 1979 in the amount of $17,500, which Judge Claiborne endorsed and deposited to his account at the Pioneer Citizens Bank of Nevada. A true and correct copy of this check is attached hereto as Exhibit B.

c. Judge Claiborne received a check from James Brown dated January 26, 1979 in the amount of $833.33, which Judge Claiborne endorsed and cashed at the Horseshoe Club casino (a.k.a. Horseshoe casino). A true and correct copy of this check is attached hereto as Exhibit C.

d. Judge Claiborne received a check from James Brown dated January 26, 1979 in the amount of $84.38, which Judge Claiborne endorsed and deposited to his account at the Pioneer Citizens Bank of Nevada. A true and correct copy of this check is attached hereto as Exhibit D.

e. Judge Claiborne received a check from James Brown dated February 15, 1979 in the amount of $1,106.66, which Judge Claiborne endorsed and cashed at the Horseshoe Club casino.

A true and correct copy of this check is attached hereto as Exhibit E.

f. Judge Claiborne received a check from James Brown dated July 19, 1979 in the amount of $7,000, which Judge Claiborne endorsed and deposited to his account at the Pioneer Citizens Bank of Nevada. A true and correct copy of this check is attached hereto as Exhibit F.

g. Judge Claiborne received a check from James Brown dated August 31, 1979 in the amount of $2,905.90, which Judge Claiborne endorsed and cashed at the Horseshoe Club casino. A true and correct copy of this check is attached hereto as Exhibit G.

h. Judge Claiborne received a check from James Brown dated November 13, 1979 in the amount of $250 which Judge Claiborne endorsed and deposited to his account at the Pioneer Citizens Bank of Nevada. A true and correct copy of this check is attached hereto as Exhibit H.

i. Judge Claiborne received a check from James Brown dated November 23, 1979 in the amount of $3,011.56, which Judge Claiborne endorsed and cashed at the Horseshoe Club Casino. A true and correct copy of this check is attached hereto as Exhibit I.

j. Judge Claiborne received a check from Annette Quintana dated January 16, 1979 in the amount of $1,000, which Judge Claiborne endorsed and cashed at the Holiday Hotel and Casino. A true and correct copy of this check is attached hereto as Exhibit J.

k. Judge Claiborne received a check from Annette Quintana dated February 12, 1979 in the amount of $1,000, which Judge Claiborne endorsed and cashed at the Horseshoe Club Casino. A true and correct copyof this check is attached hereto as Exhibit K.

l. Judge Claiborne received a check from Annette Quintana dated March 9, 1979 in the amount of $1,000, which Judge Claiborne endorsed and cashed at the Horseshoe Club Casino. A true and correct copy of this check is attached hereto as Exhibit L.

m. Judge Claiborne received a check from Annette Quintana dated April 12, 1979 in the amount of $1,000, which Judge Claiborne endorsed and deposited to his account at the Pioneer Citizens Bank of Nevada. A true and correct copy of this check is attached hereto as Exhibit M.

n. Judge Claiborne received a check from Annette Quintana dated May 14, 1979 in the amount of $1,000, which Judge Claiborne endorsed and cashed at the Horseshoe Club Casino. A true and correct copy of this check is attached hereto as Exhibit N.

2. Attached hereto as Exhibit O is a true and complete copy of the form 1040 1979 federal income tax return for Judge Claiborne bearing his signature. It was filed with the Internal Revenue Service on or about June 16, 1980. The date upon which Judge Claiborne signed the return is in dispute and reserved for trial. Schedule C of this form 1040 reported total income of $22,332.87 from legal fees received in 1979.

3. Attached hereto as Exhibit P is a true and correct copy of the financial disclosure form filed by Judge Claiborne on or about May 15, 1980 for the year 1979 pursuant to the Ethics in Government Act (28 U.S.C. App. 301 et. seq.).

4. Attached hereto as Exhibit Q is a true and correct copy of a handwritten memorandum written by Judge Claiborne and sent to Mr. Wright on or about March 1, 1980. This memorandum contains marginal notations made by Mr. Wright at a later date.

5. Attached hereto as Exhibit R are true and correct copies of three letters written to financial institutions by Jay Wright in March and May, 1980 at Judge Claiborne's direction.

6. Attached hereto as Exhibit S is a true and correct copy of:

   a. A workpaper prepared by Jay Wright on or about April, 11 1980 in connection with his preparation of Judge Claiborne's federal income tax filings.

   b. A form 4868 for 1979 prepared by Wright for Judge Claiborne, signed and filed by Wright with the Internal Revenue Service on or about April 11, 1980.

7. Attached hereto as Exhibit T is a true and correct copy of a document containing financial information for 1979 written by Judge Claiborne. The document also contains some handwritten information that was later added to it by Jay Wright. The document was prepared by Judge Claiborne and given to Mr. Wright for Mr. Wright's use in preparing Judge Claiborne's 1979 federal income tax return.

ARTICLE II

8. In 1980, Judge Claiborne received total income of $145,162.75. This income was composed of three items: (a) $54,499.92 in salary as a U.S. District Judge; (b) $2,751.14 in interest income; and (c) $87,911.83 in legal fee income for work Judge Claiborne performed prior to appointment to the bench on September 1, 1978.

9. Judge Claiborne's 1980 legal fee income was received in the form of four checks:

a. Judge Claiborne received a check dated December 31, 1979 in the amount of $42,452.34 from Peter Echeverria, pursuant to a fee sharing agreement between Judge Claiborne and Mr. Echeverria for legal services provided before Judge Claiborne was appointed to the bench. Judge Claiborne endorsed and deposited this check to his account at the Pioneer Citizens Bank of Nevada. A true and correct copy of this check is attached hereto as Exhibit U.

b. Judge Claiborne received a check dated August 6, 1980 in the amount of $888.39 from James J. Brown, pursuant to a fee splitting agreement between Judge Claiborne and Mr. Brown for legal services provided before Judge Claiborne was appointed to the bench. Judge Claiborne endorsed and depositd this check to his account at the Pioneer Citizens Bank of Nevada. A true and correct copy of this check is attached hereto as Exhibit V.

c. Judge Claiborne received a check dated August 15, 1980 in the amount of $37,500 from George DeRoy of the firm Hochman, Salkin & DeRoy (executors of the estate of Sid Wyman) for legal services that Judge Claiborne performed for Mr. Wyman prior to Mr. Wyman's death and Judge Claiborne's appointment to the bench. Judge Claiborne endorsed and cashed the check at the Golden Nugget Hotel and Casino in Las Vegas, Nevada. A true and correct copy of this check is attached hereto as Exhibit W.

d. Judge Claiborne received a check dated November 7, 1980 in the amount of $7,071.19 from James J. Brown pursuant to a fee splitting agreement between Judge Claiborne and Mr. Brown for legal services provided before Judge Claiborne was appointed to the bench. Judge Claiborne endorsed and deposited the check to his account at the Pioneer Citizens Bank of Nevada. A true and correct copy of this check is attached hereto as Exhibit X.

10. Attached hereto as Exhibit Y is a true and correct copy of (a) a 1980 Form 1040-ES prepared and submitted to the Internal Revenue Service for Harry E. Claiborne; and (b) a check, dated April 11, 1980 for $2,500.00 issued by Judge Claiborne to the Internal Revenue Service in payment of his estimated income tax for the first quarter of 1980.

11. Attached hereto as Exhibit Z is a true and correct copy of a note handwritten by Judge Claiborne and sent to Frank Rothman in August 1980.

12. Attached hereto at Exhibit AA is a true and correct

copy of letter dated April 6, 1981 from Jerry D. Watson to Judge Claiborne.

13. Judge Claiborne signed a 1980 Form 4868, "Application for Automatic Extension of Time to File U.S. Individual Income Tax Return" dated April 13, 1981, which set forth the total income tax that he expected to owe for that year as $42,847.96. With that Form 4868 was enclosed a check for $20,817.59, issued by Judge Claiborne payable to the Internal Revenue Service, toward his 1980 income tax liability. A true and correct copy of the Form 4868 and the check are attached hereto as Exhibit BB.

14. Attached hereto as Exhibit CC is a true, correct, and complete copy of the 1980 Form 1040 federal income tax return for Judge Claiborne, which he signed and filed with the Internal Revenue Service on or about June 15, 1981.

15. Attached hereto as Exhibit DD is a true and correct copy of the financial disclosure form filed by Judge Claiborne on or about May 16, 1981 for the year 1980 pursuant to the Ethics in Government Act (28 U.S.C. App. 301 et. seq.).

16. Sometime after July 24, 1981, Judge Claiborne received a refund check for $44,256.00 from the Internal Revenue Service for overpayment of his 1980 income tax. Judge Claiborne

endorsed and cashed this check at the Golden Nugget Hotel and Casino. Attached hereto as Exhibit EE is a true and correct copy of this check.

Article III

17. On August 10, 1984, in the United States District Court for the District of Nevada, a jury found Judge Harry Claiborne guilty of two counts of willfully filing a false income tax return, in violation of section 7206(1) of title 26, United States Code. _United States_ v. _Harry E. Claiborne_, Dkt. No. CR-R-83-57.

18. On October 3, 1984, the Honorable Walter E. Hoffman sentenced Judge Claiborne to two years imprisonment for each offense, to be served concurrently, together with a fine of $5,000 for each violation.

19. On July 8, 1985, Judge Claiborne's conviction was affirmed by the United States Court of Appeals for the Ninth Circuit. _United States_ v. _Claiborne_, 765 F.2d 784 (9th Cir. 1985).

20. On April 21, 1986, the United States Supreme Court denied a petition for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit. _Claiborne_ v. _United States_, 106

S. Ct. 1636 (1986).

21. On May 16, 1986, Judge Claiborne reported to the Federal Prison Camp at Maxwell Air Force Base in Montgomery, Alabama to begin service of his sentence.

Nicholas D. Chabraja Special Counsel U.S. House of Representatives	Oscar B. Gooodman Counsel for Judge Harry E. Claiborne

Dated:__________________

I.D

IN THE SENATE OF THE UNITED STATES

SITTING AS A COURT OF IMPEACHMENT

)
)
) Motion #1
)
Impeachment of Judge)
Harry E. Claiborne)

MOTION FOR SUMMARY DISPOSITION OF THIRD ARTICLE OF IMPEACHMENT

The House Of Representatives, through its managers and counsel, respectfully moves the Senate, sitting as a court of impeachment, to enter a summary judgment of conviction on Article III of the Articles of Impeachment. The reasons supporting this motion are set forth in the Memorandum in Support of Motion for Summary Disposition of Third Article of Impeachment, filed herewith.

Respectfully submitted,

THE UNITED STATES
HOUSE OF REPRESENTATIVES

By Nicholas D. Chabraja
Nicholas D. Chabraja
Special Counsel

Managers of the House of Representatives

Peter W. Rodino, Jr.
Robert W. Kastenmeier
Romano L. Mazzoli
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M. Elaine Mielke, General Counsel
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Judith Bailey, Counsel
Daniel M. Freeman, Counsel
Gary G. Goldberger, Counsel
Warren S. Grimes, Counsel
Joseph V. Wolfe, Counsel
Jonathan R. Yarowsky, Counsel

I.E

IN THE SENATE OF THE UNITED STATES

Sitting As A Court Of Impeachment

In re)
)
)
) MOTION #1
)
IMPEACHMENT OF JUDGE)
HARRY E. CLAIBORNE)

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION OF THIRD ARTICLE OF IMPEACHMENT

On August 10, 1984, United States District Judge Harry E. Claiborne was convicted by a jury of charges that he willfully failed to report $18,740.06 on his 1979 income tax return and $87,911.83 on his 1980 tax return. The judgment of conviction was entered by a forum that granted Judge Claiborne full procedural rights. He was afforded the presumption of innocence. The jury's verdict was unanimous and based upon a finding of guilt beyond a reasonable doubt. The attention of the tribunal was focused and undivided. The regularity of the procedures was affirmed on appeal. As a result of these proceedings, Judge Claiborne has been incarcerated in a federal prison camp.

In this memorandum, the House of Representatives respectfully requests that the Senate recognize this judgment of conviction and determine that it is an adequate basis, under Article III of the Articles of Impeachment, for Judge Claiborne's conviction by the Senate and removal from office. By reason of the felony convictions, which were obtained in a fair and proper proceeding, Judge Claiborne can no longer legitimately perform the functions of a federal judge.

I. Introduction

For the first time in the history of the United States, the impeachment of a public official by the House of Representatives has been preceded by a criminal conviction in the federal courts of the United States. In the third Article of Impeachment presented to the Senate, the House of Representatives has pleaded the fact of that conviction as impeachable conduct:

> On August 10, 1984, in the United States District Court for the District of Nevada, Judge Harry E. Claiborne was found guilty by a twelve-person jury of making and subscribing a false income tax return for the calendar years 1979 and 1980 in violation of section 7206(1) of title 26, United States Code.
>
> Thereafter, a judgment of conviction was entered against Judge Harry E. Claiborne for each of the violations of section 7206(1), title 26, United States Code, and a sentence of two years imprisonment for each violation was imposed, to be served concurrently, together with a fine of $5000 for each violation.
>
> Wherefore, Judge Harry E. Claiborne was and is guilty of misbehavior and was and is guilty of high crimes.

In pleading the fact of the conviction in Article III -- as opposed to the underlying conduct that is pleaded in Articles I and II -- the House of Representatives has alleged that a conviction for a felony offense in the federal courts of the United States provides an independent and sufficient basis for the United States Senate to determine, in the exercise of its power under Article I, Section 3 of the Constitution, that Judge Claiborne should be removed from office.

The House of Representatives intends to present no evidence in support of Article III other than the record of the trial and appellate proceedings in the criminal case.[1] The House therefore submits that the allegation in Article III is ripe for disposition. Resolution of Article III requires two determinations, each of which may be made on the basis of the record as it exists: (1) that the Senate will recognize the valid and final judgment of conviction entered in the United States District Court and affirmed on appeal; and (2) that the willful subscribing of a false tax return is a high crime or misdemeanor and justifies removal from office.[2]

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[1] *See Pretrial Statement of the House of Representatives* (filed August 28, 1986).

[2] In connection with this motion, the House of Representatives respectfully submits that the Senate properly may consider, as evidence of the regularity of the proceedings, the trial transcript and appellate record in (Footnote Continued)

Recognition of the judgment would be consistent with judicial practice and would provide no injustice to the person impeached. Nor would it impair the obligation of the Senate to determine whether the conduct established by the conviction constituted an impeachable offense and justified removal from office. Recognition of the judgment merely would treat as established those facts that already have been determined to be true beyond any reasonable doubt, in a proceeding that afforded Judge Claiborne full procedural rights. While those facts would be treated as determined, only the Senate could decide what significance and what consequence those facts should bear.

In this memorandum, the House of Representatives first demonstrates that Judge Claiborne's conviction indeed is final. The House then submits that the Senate can and should recognize the fact that Judge Claiborne has been convicted and that certain conduct properly has been established. Finally, the House asserts that the willful evasion of income taxes is an impeachable offense and that Judge Claiborne should be removed from office.

II. The Conviction Is Final

On December 8, 1983, Judge Harry E. Claiborne was named as defendant in a seven count indictment filed in the

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(Footnote Continued)
United States v. Claiborne, Dkt. No. CR-R-83-57 (D. Nev.). A copy of the transcript has been provided to the Senate.

United States District Court. United States v. Claiborne, Dkt. No. CR-R-83-57 (D. Nev.) Two counts charged Judge Claiborne with filing fraudulent tax returns. After an initial proceeding resulted in a mistrial and the government moved to dismiss four of the original counts, on July 31, 1984 the tax fraud charges proceeded to trial before a jury. Judge Claiborne participated fully in that trial. He was represented throughout by able counsel.[3] He presented witnesses on his own behalf.[4] Judge Claiborne testified personally before the jury.[5] On August 10, 1984, at the conclusion of the trial, the jury unanimously found that Judge Claiborne was guilty of filing fraudulent tax returns for the years 1979 and 1980.

On October 3, 1984, Judge Claiborne was sentenced to a two-year prison term and fined $10,000. On July 8, 1985, his conviction was affirmed by the United States Court of Appeals for the Ninth Circuit. United States v. Claiborne, 765 F.2d 784 (9th Cir. 1985). The Court of Appeals specifically rejected Judge Claiborne's argument that the evidence at trial was insufficient to sustain the conviction. *Id.*, at 796-799. After the Ninth Circuit denied a motion for rehearing and a suggestion for rehearing en banc, the United States Supreme Court denied Judge Claiborne's petition for certiorari to review the decision of the Ninth Circuit. *Claiborne* v. *United States*, 106 S. Ct. 1636 (1986). Having exhausted all direct appeals, on May 16, 1986 Judge Claiborne reported to the Federal Prison Camp at Maxwell Air Force Base in Alabama to begin service of his sentence. While Judge Claiborne filed a lengthy motion for post-conviction relief in the District Court, both that court and the Court of Appeals refused to stay execution of the sentence.

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[3] Judge Claiborne was represented by three attorneys: Mr. Oscar B. Goodman, Mr. J. Richard Johnston, and Mr. William J. Raggio. Mr. Goodman continues to represent Judge Claiborne in these proceedings.

[4] Sixteen witnesses were presented by the defense.

[5] Transcript of Proceedings, Dkt. No. CR-R-83-57, p. 816-1039 (August 6-7, 1984).

For all legal purposes, the judgment of conviction is final. The judgment could be used, without relitigation of the underlying facts, to estop Judge Claiborne in a subsequent judicial proceeding,[6] to impeach him as a witness,[7] and -- if he were a member of the civil service -- to remove him from office.[8] Certainly, the judgment was

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6/ *Emich Motors Corp.* v. *General Motors Corp.*, 340 U.S. 558, 568 (1951); *Compton* v. *Ide*, 732 F.2d 1429, 1434 (9th Cir. 1984); *Gray* v. *Commissioner of Internal Revenue*, 708 F.2d 243, 246 (6th Cir. 1983), *cert. denied*, 466 U.S. 927 (1984).

7/ Rule 609(e), Federal Rules of Evidence; *United States* v. *Smith*, 623 F.2d 627 (9th Cir. 1980).

8/ *Otherson* v. *Department of Justice, Immigration and Naturalization Service*, 711 F.2d 267 (D.C. Cir. 1983); *Embrey* v. *Hampton*, 470 F.2d 146 (4th Cir. 1972).

sufficient to warrant the execution of Judge Claiborne's sentence of imprisonment.

The finality of the conviction is not impaired by the pendency of Judge Claiborne's post-conviction motion.

> Once the defendant's chance to appeal has been waived or exhausted . . . we are entitled to presume he stands fairly and finally convicted, especially when, as here, he already has had a fair opportunity to present his federal claims to a federal forum. Our trial and appellate procedures are not so unreliable that we may not afford their completed operation any binding effect beyond the next in a series of endless postconviction collateral attacks. To the contrary, a final judgment commands respect.

United States v. Frady, 456 U.S. 152, 164 (1982).[9] It is an established principle of the law of judgments that "a judgment otherwise final for purposes of the law of res judicata is not deprived of such finality by the fact that time still permits commencement of proceedings in the trial court to set aside the judgment and grant a new trial or the like; nor does the fact that a party has made such a motion render the judgment nonfinal." Restatement of the Law of Judgments 2d, § 13, comment f (1980).

Recognition of this principle is particularly compelling in a criminal case. A motion for post-conviction relief from a judgment in federal court "may be made at any time."[10/] Moreover, "[a] prisoner whose motion is denied will often file another, sometimes many successive motions."[11/] A claim is not rendered moot by the expiration of the underlying sentence.[12/] Consistent with these principles, the court in Webb v. Voirol, 773 F.2d 208 (8th Cir. 1985) recently held that an individual was estopped from disputing facts established by a prior judgment in a criminal case, despite the fact that a post-conviction motion for relief from that judgment was pending.

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[9] See also Barefoot v. Estelle, 463 U.S. 880, 887 (1983).

There is a further reason why Judge Claiborne's post-conviction motion should not foreclose reliance on the judgment. None of the claims raised by Judge Claiborne concern the integrity of the factfinding process. Judge Claiborne has asserted two grounds upon which he seeks to vacate the verdict of the jury: (1) that government agents participated in an illegal seizure of evidence from his home, and (2) that government officials prevented the grand jury from considering certain exculpatory evidence. Motion

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[10/] 28 U.S.C. § 2255. See also United States v. Addonizio, 442 U.S. 178, 184 n.11 (1979). Judge Claiborne's motion for post-conviction relief was made pursuant to this statute.

[11/] Sanders v. United States, 373 U.S. 1, 8 (1963).

[12/] Carafas v. LaVallee, 391 U.S. 234 (1968); Lane v. Williams, 455 U.S. 624, 632 (1982).

to Vacate Judgment and Sentence, Dkt. No. CR-R-83-57 (filed May 5, 1986).[13]

Neither of Judge Claiborne's claims concerns the integrity of the jury's determination of guilt. There is no suggestion in the motion that the evidence presented at trial, however it was secured, was not as incriminating as the jury found it to be. There is no pending claim that Judge Claiborne was hampered from presenting all exculpatory evidence to the jury that actually decided the case. In sum, Judge Claiborne does not contend in his motion that he is not guilty of the charges against him. The Articles of Impeachment are based on allegations of misconduct by Judge Claiborne, not by the government. For all purposes, the unanimous verdict of the jury is a fair and final determination of Judge Claiborne's commission of two felony offenses.

III. The Judgment Of Conviction Is Entitled To Credit In The Impeachment Proceedings In The Senate

As an adjudicatory body sitting as a court of impeachment, the Senate must determine the credit that will be afforded to a final judgment of conviction in a judicial proceeding. While the Senate is not bound by the determination that Judge Claiborne is guilty of two felony offenses, sound reasons exist for the Senate to choose to recognize the validity of the judgment. The principle that adjudicatory bodies should give recognition and credit to the judgments of other proper tribunals is rooted in history, judicial precedent, and logic. Since Judge Claiborne already has had a full and fair opportunity to present his defense, in a forum that is ideally suited to the resolution of disputed issues of fact, there is no reason to allow him to relitigate this case in the United States Senate.

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[13] The Department of Justice has filed an extensive response to Judge Claiborne's motion in the trial court, specifically rebutting these allegations. See Government's Opposition to Defendant's Motion to Vacate Judgment and Sentence (filed May 15, 1986).

A. The concepts of "recognition" and "credit" form an integral part of Western legal tradition.

For the first time in its history, the United States Senate must determine the significance, in an impeachment proceeding in the Senate, of a prior judgment of conviction in the courts of the United States. The precedent established by this case may guide impeachment proceedings for hundreds of years. In addressing this novel and important issue, it is useful first to consider rules that have been established both by Congress and by the courts for the resolution of this same issue in judicial proceedings.

The general rule may be easily stated:

> In our system of jurisprudence the usual rule is that the merits of a legal claim once decided in a court of competent jurisdiction are not subject to redetermination in another forum.

Kremer v. Chemical Construction Corp., 456 U.S. 461, 485 (1982). Two manifestations of this principle are significant here. First, under the doctrine of collateral estoppel, "once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case." Allen v. McCurry, 449 U.S. 90, 94 (1980). Second, under the doctrine of "full faith and credit," a judgment is entitled to receive, in every court in the United States, the same credit, validity, and effect that it rightfully may receive in the court in which it was pronounced. Hampton v. M'Connel, 16 U.S. 234, 235 (1818)(Marshall, C.J.).

The concept of affording "credit" to a public act or record of another body has been recognized at least since the sixteenth century. Bunting v. Lepingwel, 76 Eng. Rep. 950, 952 (1585); Caudrey's Case, 77 Eng. Rep. 1, 8 (1595). The notion was invoked in the developing law of comity among nations, as respect for the finality of foreign acts and judgments became central to the reciprocity due sovereign states. See, e.g., Pope Alexander VI's Bull of March 4, 1493, 1 Magnum Bullarium Romanum, 466 (Cherubini ed. 1655). The concept also was recognized in the early years of the Republic, and explicitly made binding on state courts in

Article IV, Section 1 of the Constitution.[14/] Congress itself quickly embraced this principle when, as one of its first acts, it directed that all federal courts shall afford the same full faith and credit to state court judgments that would apply in the state's own courts. Act of May 26, 1790, ch. 11, 1 Stat. 122, 28 U.S.C. § 1738.[15/]

Thus, any court in the United States would afford the same credit to Judge Claiborne's judgment of conviction as would be granted by the court that rendered it. That credit, in a subsequent proceeding, in turn would be governed by the principles of collateral estoppel. As a result of their applicability to the instant case, some of those principles bear noting.[16/] A litigant who was not a party to a federal case may use collateral estoppel "offensively" in a new action against the party who lost on the decided issue in the first case.[17/] Moreover, it is

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[14/] "Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

[15/] See Kremer v. Chemical Construction Corp., 456 U.S. 461, 462 (1982). The statute remains in effect today, unamended, after almost 200 years.

[16/] See also Memorandum in Support of Motion to Apply Doctrine of Collateral Estoppel to Specific Issues Alleged in the First Two Articles of Impeachment (Motion #2), filed by the House of Representatives on August 28, 1986.

[17/] Allen v. McCurry, 449 U.S. 90, 95 (1980)(citing Parklane Hosiery Co. v. Shore, 439 U.S. 322 (1979)).

well established that a criminal conviction may work an estoppel in a subsequent civil proceeding.[18] More specifically, "a conviction for federal tax evasion, either upon a plea of guilty or upon a jury verdict of guilt, conclusively establishes fraud in a subsequent tax proceeding through application of the doctrine of collateral estoppel."[19] Finally, in a civil service action preceded by a felony conviction, a discharge may be "properly based on the conviction, not the underlying acts."[20]

The policies that lie beneath each of these applications of the doctrine of finality are the same. As the Supreme Court has stated most simply, "[o]ne trial of an issue is enough." Johnson v. Muehlberger, 340 U.S. 581, 585 (1951), quoting Treinies v. Sunshine Mining Co., 308 U.S. 66, 78 (1939). Recently, the Supreme Court has noted that affording recognition to a final judgment reflects a variety of concerns, "including notions of comity, the need to prevent vexatious litigation, and a desire to conserve judicial resources." Migra v. Warren City School District Board of Education, 465 U.S. 75, 84 (1984).

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[18] Emich Motors Corp. v. General Motors Corp., 340 U.S. 558, 568 (1951); Compton v. Ide, 732 F.2d 1429, 1434 (9th Cir. 1984).

[19] Gray v. Commissioner of Internal Revenue, 708 F.2d 243, 246 (6th Cir. 1983), cert. denied, 466 U.S. 927 (1984).

[20] Embrey v. Hampton, 470 F.2d 146, 149 (4th Cir. 1972). See also Otherson v. Department of Justice, Immigration and Naturalization Service, 711 F.2d 267 (D.C. Cir. 1983).

B. Although it is not bound to do so, the Senate can and should afford similar recognition to the judgment of conviction.

The historical and judicial applications of the doctrines of collateral estoppel and full faith and credit are not binding on the Senate. A decision by the Senate to afford similar recognition to the judgment of conviction, however, would serve the same policies that the doctrines are designed to advance. At the same time, recognition of the judgment neither would impair the obligation of the Senate to try an impeachment nor work an injustice upon Judge Claiborne.

1. Compelling reasons support an application of the doctrine of finality.

The values that are reflected in the judicial doctrines of full faith and credit and collateral estoppel apply with equal force to an impeachment trial in the Senate, where the Senate sits as an adjudicatory body and exercises many of the functions of a court.

Recognition of the judgment would extend comity to the proper and considered decision of the federal courts. At trial, on direct appeal, on application for consideration by the Court of Appeals *en banc*, and on petition for certiorari filed in the Supreme Court, Judge Claiborne has presented claims to over 30 federal judges. In reviewing those claims, each court has performed a function specifically delegated to it and imminently within its realm of expertise. At the conclusion of that process, the judgment of conviction remains intact. By recognizing the fact of that conviction, the Senate would respect the deliberate and proper consideration of this case by the federal courts.

Recognition of the judgment also would avoid the risk of inconsistent results. Certainly, the Senate has the right to decide that Judge Claiborne's conduct, as established by the judgment, does not warrant removal from office. But a decision by the Senate, sitting in essence as a 13th juror, that Judge Claiborne was not guilty of the conduct alleged would undermine both the judicial and the impeachment process. Many reasons, such as the passage of time, the pressures from live television coverage, or the aura of the forum, may influence the behavior of witnesses and the outcome of the trial; there is little guarantee, however, that a second determination of the facts will be more reliable.

Recognition of the judgment also would prevent mere repetition of litigation that already has been concluded. The basis for impeachment by the House of Representatives is the very conduct established beyond a reasonable doubt by the verdict of the jury in the criminal trial. The proof presented will be the same. There is no reason simply to do again what already has been done, to provide a second forum to a litigant who has had a full opportunity to present his defense.

Finally, recognition of the judgment would conserve the resources of the Senate. The consideration of the Senate properly would be limited to the determination of whether the conduct established constitutes an impeachable offense, as alleged by the House of Representatives, and whether it warrants removal from office.

2. Recognition of the judgment will not impair the obligation of the Senate to try the impeachment.

In executing its constitutional obligation to try an impeachment, the Senate need not be blind to the legitimate actions of another branch of government. While ours is a government of divided powers, "the Constitution by no means contemplates total separation of [the] three essential branches of government." Buckley v. Valeo, 424 U.S. 1, 121 (1976).

> [To recognize the doctrine of separate powers] is not to say that the three branches of government are not co-ordinate parts of one government and that each in the field of its duties may not invoke the action of the other two branches in so far as the action invoked shall not be an assumption of the constitutional field of action of another branch. In determining what it may do in seeking assistance from another branch, the extent and character of that assistance must be fixed according to common sense and the inherent necessities of governmental co-ordination.

J.W. Hampton, Jr., & Co. v. United States, 276 U.S. 394, 406 (1928).

As an adjudicatory body, the Senate must establish rules of procedure and evidence. Many such rules have a substantive impact. If a key witness were to die or become ill, the Senate would be required, and certainly would be able, to determine whether prior sworn testimony in another forum would be admissible as substantive evidence. Such a determination is an inherent part of the adjudicatory function. Similarly, the Senate has the inherent authority, as an adjudicatory body, to determine the credit that will be afforded to a proper and final judgment of another forum.

Recognition of the judgment would not impair the obligation of the Senate to try the impeachment. It is the Senate that would decide, through its own deliberation, that the judgment is sufficiently final and proper to warrant consideration. Moreover, there is a difference between the recognition of a judgment, on the one hand, and the determination of the significance or consequence of that judgment, on the other. Only the Senate may determine whether Judge Claiborne's conduct constitutes an impeachable offense and warrants removal from office. In carrying out that function, however, the Senate is not precluded from deciding that the conduct itself already has been determined in a fair and final proceeding that afforded Judge Claiborne full procedural righs.

3. Recognition of the judgment will not cause any injustice to the person impeached.

Recognition of the conviction by the Senate will not cause any injustice to Judge Claiborne. He has had a full day in court. The evidence that he presented, the testimony that he offered, and the argument that he made all are reflected in the judgment. He has had an opportunity to challenge the jury's determination of guilt on appeal. Indeed, it is for the very reason that these rights have been afforded that the acceptance of the judgment is proper. There is nothing that the Senate can afford to Judge Claiborne that was not available to him in the judicial proceeding.

As recognized by members of the judiciary, in ruling that a criminal trial may precede an impeachment proceeding:

> With a court trial, a judge is assured of the protections given to all those charged with criminal conduct. The issues are heard in a calm and reasoned manner and are subject to the rules of evidence, the presumption of innocence, and other procedural safeguards.

United States v. Isaacs, 493 F.2d 1124, 1144 (7th Cir.), cert. denied, 417 U.S. 976 (1974).

In a similar context, a final judgment of conviction has been held to be sufficient to warrant subsequent disciplinary action. Many jurisdictions provide for an immediate and summary suspension from the practice of law upon the conviction for a felony offense. United States v. Jennings, 724 F.2d 436 (5th Cir.), cert. denied, 467 U.S. 1227 (1984); United States v. Friedland, 502 F. Supp. 611 (D.N.J. 1980), aff'd, 672 F.2d 905 (3d Cir. 1981). Disbarment either has been automatic, United States v. Friedland, supra, Kentucky Bar Association v. Pope, 549

S.W.2d 296 (Ky. 1976), or ordered after an abbreviated hearing in which the fact of the conviction cannot be relitigated. In re Scott, 98 Ill.2d 9, 455 N.E.2d 81 (1983); Attorney Grievance Commission of Maryland v. Deutsch, 294 Md. 353, 450 A.2d 1265 (1982). As the Illinois Supreme Court has held, "conviction of a crime involving moral turpitude is conclusive evidence that grounds for imposing discipline exist." In re Scott, supra, 455 N.E.2d at 84. The New York Court of Appeals explained more fully, in holding that New York law required an immediate and automatic suspension after conviction for a felony offense:

> Mr. Mitchell has had his day in court, and has had every opportunity to refute the charges made against him. In convicting him, a jury of his peers has credited the testimony of his accusers and rejected whatever defenses and evidence he may have set forth. A strong presumption of regularity attaches to that judgment of conviction.

Mitchell v. Association of the Bar of the City of New York, 40 N.Y.2d 153, 351 N.E.2d 743, 746 (1976). If Judge Claiborne could no longer practice law in most jurisdictions in this country, he should not be permitted to preside over matters in a United States District Court.

IV. Tax Evasion Is A High Crime Or Misdemeanor Within The Meaning Of The Constitution And Justifies Removal From Office

The House of Representatives respectfully submits that tax evasion is an impeachable offense within the meaning of the Constitution. Judge Claiborne was convicted of two counts of violating 26 U.S.C. § 7206(1), which provides by its own terms that a violator "shall be guilty of a felony." At common law, the term "felony" was applied to infamous or serious crimes. Generally, it was the type of offense that was punishable either by death or by imprisonment in the penitentiary.

Federal and state courts have held that a crime of which fraud is an element constitutes a crime of moral turpitude.[21/] The crime of tax evasion proscribed in § 7206(1) requires an intent to defraud.[22/] Violations of 26 U.S.C. § 7206(1) have been held to be crimes of moral turpitude, sufficient to justify the disbarment or suspension of an attorney from the practice of law.[23/] Certainly, a federal judge should not be held to a lesser standard than the attorneys who may practice before him.

Under any reasonable interpretation of the words "high crime," a conviction for conduct that is a felony under the laws of the United States is an impeachable offense. Given this fact, Judge Claiborne should be removed from office. A convicted felon cannot legitimately perform

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[21/] See Jordan v. DeGeorge, 341 U.S. 223, 227 (1951).

[22/] United States v. Marabelles, 724 F.2d 1374 (9th Cir. 1984).

[23/] United States v. Friedland, 502 F. Supp. 611 (D.N.J. 1980), aff'd, 672 F.2d 905 (3d Cir. 1981); In re Scott, 98 Ill.2d 9, 455 N.E.2d 81 (1983); Attorney Grievance Commission of Maryland v. Deutsch, 294 Md. 353, 450 A.2d 1265 (1982).

the functions of a federal judge. Public confidence in his actions cannot be maintained. Just as the public at large will give "credit" to the fact that Judge Claiborne has been convicted of a felony offense in a proper court of law, so too should the Senate recognize that this fact may serve as the basis for his removal from office.

V. Conclusion

Based on his conviction of a felony offense and subsequent imprisonment, the House of Representatives respectfully requests that the Senate summarily move to disposition and convict Judge Harry E. Claiborne, under Article III of the Articles of Impeachment.

Respectfully submitted,

THE UNITED STATES
HOUSE OF REPRESENTATIVES

By Nicholas D. Chabraja

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I.F

IN THE SENATE OF THE UNITED STATES

SITTING AS A COURT OF IMPEACHMENT

Impeachment of Judge Harry E. Claiborne) Motion #2

MOTION TO APPLY COLLATERAL ESTOPPEL TO SPECIFIC ISSUES ALLEGED IN THE FIRST TWO ARTICLES OF IMPEACHMENT

The House Of Representatives, through its managers and counsel, respectfully moves the Senate, sitting as a court of impeachment, to determine, without further proof, (1) that Judge Harry E. Claiborne knowingly and intentionally made or subscribed a false statement on his 1979 and 1980 income tax returns; and (2) that, in filing those returns, Judge Claiborne did not rely in good faith, after full and honest disclosure, upon the actions of his tax preparers. The reasons supporting this motion are set forth in the Memorandum in Support of Motion to Apply Doctrine of Collateral Estoppel to Specific Issues Alleged in the First Two Articles of Impeachment, filed herewith.

Respectfully submitted,

THE UNITED STATES
HOUSE OF REPRESENTATIVES

By Nicholas D. Chabraja
Nicholas D. Chabraja
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I.G

IN THE SENATE OF THE UNITED STATES

Sitting As A Court Of Impeachment

In re)
)
)
) MOTION #2
)
)
IMPEACHMENT OF JUDGE)
HARRY E. CLAIBORNE)

MEMORANDUM IN SUPPORT OF MOTION TO APPLY DOCTRINE OF COLLATERAL ESTOPPEL TO SPECIFIC ISSUES ALLEGED IN THE FIRST TWO ARTICLES OF IMPEACHMENT

On August 10, 1984, a jury in the United States District Court for the District of Nevada returned a verdict finding Judge Harry E. Claiborne guilty of two counts of making or subscribing a false income tax return. In its verdict, the jury necessarily and unanimously found that (1) Judge Claiborne knowingly and intentionally failed to report the true amount of his income on his tax returns; and (2) Judge Claiborne did not rely in good faith upon the work of his tax preparers in completing the returns. In this memorandum, the House of Representatives respectfully requests that the Senate treat these two specific matters as established in its consideration of Articles I and II of the Articles of Impeachment.

I. Introduction

Articles I and II of the Articles of Impeachment allege, as a basis for Judge Claiborne's conviction and removal from office, the conduct underlying his conviction in the federal courts. Article III alleges the fact of the conviction itself as an independent and sufficient basis for that sanction. In a motion addressed to Article III, the House of Representatives has requested that the Senate accept the judgment of conviction.[1] That motion is based on contentions (1) that the conviction is final; (2) that it was obtained in a fair, regular, and proper proceeding; and (3) that a conviction for a felony offense is a legitimate and sufficient basis for Judge Claiborne's removal from office. The motion does not require the Senate to examine the specific contentions of the parties at trial. In asking the Senate to accept the judgment, the motion relies on the doctrines of full faith and credit and collateral estoppel.

The instant motion is addressed to the allegations in Articles I and II. The House of Representatives respectfully moves the Senate to examine the specific contentions of the parties at trial and to determine, again based on principles of credit and estoppel, that those specific matters that were litigated and resolved at trial need not be re-examined by the Senate.[2/] Acceptance of this contention would focus the attention of the impeachment court on any matters that remain for resolution, avoid the unnecessary repetition of previous litigation, and reduce the risk of inconsistent results.

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[1] See Motion for Summary Disposition of Third Article of Impeachment (Motion #1), and accompanying memorandum in support of that motion (filed August 28, 1986).

II. Matters Specifically Litigated and Resolved

On December 8, 1983, Judge Harry E. Claiborne was named as defendant in a seven count indictment filed in the United States District Court. United States v. Claiborne, Dkt. No. CR-R-83-57 (D. Nev.). Two counts, for which Judge Claiborne ultimately was convicted, alleged a violation of section 7206(1) of title 26, United States Code. To prove a violation of § 7206(1), the government was required to establish several elements:

> (1) that Judge Claiborne made or subscribed a tax return that was incorrect as to a material matter;
>
> (2) that the return contained a written declaration that it was made under the penalties of perjury;
>
> (3) that Judge Claiborne did not believe the return to be true and correct as to every material matter; and
>
> (4) that Judge Claiborne subscribed to the return willfully, not by accident,

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[2/] In connection with this motion, the House of Representatives respectfully submits that the Senate properly may consider, as evidence of the regularity of the proceedings, the trial transcript and appellate record in United States v. Claiborne, Dkt. No. CR-R-83-57 (D. Nev.). A copy of the transcript has been provided to the Senate.

> mistake, or negligence, with the specific intent to violate the law.

See United States v. Marabelles, 724 F.2d 1374, 1380 (9th Cir. 1984).

At trial, many of these elements were not disputed. In his opening statement, counsel for Judge Claiborne acknowledged, for example, that Judge Claiborne received $41,072.93 in legal fee income for 1979 but reported only $22,332.87 of those fees; counsel stated, "we agree that in fact that was an incorrect report."[3/] Defense counsel also described portions of the 1980 return "virtually as an abortion or an abberation."[4/]

Two related matters, however, were vigorously litigated at trial: (1) whether Judge Claiborne intentionally made false statements on his tax returns; and (2) whether Judge Claiborne, instead, relied in good faith upon the work of his tax preparers. The fact that these matters were directly placed in issue at the trial is evident from an examination of the opening statements, the evidence presented, the closing arguments, and the judge's instructions to the jury.

In the government's opening statement, the prosecutor assumed the burden of proving that Judge

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[3/] Opening Statement of Oscar Goodman, August 2, 1984, Transcript at 23-24.

[4/] Id., Transcript at 34.

Claiborne's misstatements of fact were intentional.[5/] In the opening statement for the defense, counsel for Judge Claiborne explicitly informed the jury that this was the only matter to be determined:

> So the only issue, the only issue that we see from the defense point of view in this adversary system is whether or not Judge Claiborne intentionally filed an incorrect return.

Opening Statement of Oscar Goodman, *supra*, at 24. Counsel claimed that Judge Claiborne did not do so; "[t]he evidence will show that the error in the return was attributable to Mr. Wright [his accountant] and not to Judge Claiborne." *Id*. Throughout his opening statement, defense counsel maintained this same theme:

> We are here to establish whether or not Judge Claiborne had the intent, the willfulness, the bad purpose to violate the law, and I submit to you that he did not. [I submit] that he made the disclosures to Jay Wright and that Jay Wright was the one who filed the return, and Judge Claiborne had every reason in the world to rely upon him at the time that the return was filed.

Id., at 31-32.[6/]

The evidence submitted by the parties at trial closely tracked these opening statements. The government submitted proof that, with respect to tax year 1979, Judge

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[5/] Opening Statement of William Hendricks, August 2, 1984, Transcript at 8, 9, 13.

[6/] Counsel made a similar statement with respect to the 1980 return. *Id*., at 35.

Claiborne did not make full and honest disclosures to his accountant and, indeed, had misstated his income.[7] With respect to 1980, the government submitted evidence that the return itself was so inartfully prepared, so inaccurate as to material facts, and so divergent from anticipated tax liability that good faith reliance was impossible.[8]

The defense vigorously disputed this proof. Judge Claiborne himself testified. He ardently contended that he had sent his accountant a letter on April 11, 1980 [Defense Exhibit 1] that accurately reflected his legal fee income.[9] Judge Claiborne's secretary, Judy Ahlstrom, also testified that Mr. Wright had received the letter with the correct information.[10] With respect to 1980, Judge Claiborne similarly testified that he had disclosed all relevant information to his tax preparer and had relied upon the preparer's work.[11] Judge Claiborne specifically testified, with respect to each tax year, that he had not intentionally filed a false tax return.[12]

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[7] See Transcript of Trial Proceedings, 176, 198-201 (August 2, 1984).

[8] See id., at 8-9, 500-502 (August 2-4, 1984).

[9] Id., at 860-872 (August 6, 1964).

[10] Id., at 618 (August 6, 1984).

[11] Id., at 887-889 (August 6, 1984).

[12] Id., at 912 (August 7, 1984).

The contentions of the parties were crystallized in the closing arguments. Again, the parties focused on Judge Claiborne's disclosure of information to, and his reliance upon, his tax preparers. The government stated the issue bluntly:[13]

> I submit to you, ladies and gentlemen, when you think about this you will conclude that the only real issue in the 1979 year is whether Jay Wright got defense exhibit 1. That is what it all comes down to, it's very simple.

In his final submission, defense counsel agreed that the government properly had identified the matter to be decided. Counsel argued that the following was necessary to convict Judge Claiborne:[14]

> You would have to believe that the April 11, 1980 letter which as I've said is the most critical piece of evidence in this case is a complete forgery, that it was made up after the fact and very cleverly fitted in with the check and the $2500 check and the date on the application for extension.
>
> You would have to believe that Judge Claiborne and his secretary, Judy Ahlstrom, both perjured themselves completely under oath in this trial on the stand and you would have to believe that Wright's testimony is completely truthful and convincing and I suggest to you that no reasonable person would reach those conclusions.

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[13] Closing Argument of William Hendricks, August 9, 1984, Transcript at 18.

[14] Closing Argument of J. Richard Johnston, August 9, 1984, Transcript at 60.

Defense counsel framed the issue for 1980 in a similar manner:[15]

> The only real issue as to 1980 is whether Judge Claiborne gave Mr. Watson [the 1980 tax preparer] the yellow sheets, whether they were relied upon by Mr. Watson or someone in his office in preparing the 1980 return and whether the Judge believed the return was properly prepared when he signed it.

At the conclusion of these arguments, the trial judge instructed the jury on the governing law. Judge Hoffman explicitly instructed the jury that it could not find Judge Claiborne guilty unless it found beyond a reasonable doubt that he had acted with the specific intent to violate the law:[16]

> In order for the defendant to be found guilty of filing a false tax return in violation of section 7206 of title 26 of the United States Code, the government must prove three things beyond a reasonable doubt:
>
> First, the defendant signed a tax return knowing that it contained false information;
>
> Second, that he acted willfully, that is that he acted voluntarily, for the purpose of evading his known legal duty under the tax laws, and not as a result of accident or negligence; and
>
> Third, the tax return contained a written declaration that it was made under penalties of perjury.

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[15] Id., at 61.

[16] Charge To Jury, August 9, 1984, at 13-14.

"If the government has failed to prove beyond a reasonable doubt any of [these] essential elements . . . you shall find the defendant not guilty on that count or charge."[17] Judge Hoffman also specifically instructed the jury that it could consider Judge Claiborne's contention that he had relied in good faith upon his tax preparers:[18]

> The defendant has presented evidence that any falsehoods in his income tax return are the fault of his two tax preparers. You may consider this evidence in deciding whether the defendant acted with the purpose of evading his duties under the tax law only if you find three things to be true:
>
> First, the defendant actually relied on his tax preparer's preparation of his return;
>
> Second, the defendant's reliance was based on a good faith belief that his tax preparer would prepare an accurate return; and
>
> Third, the reliance came after the defendant had fully disclosed all relevant facts to his tax preparer about his taxable income.

The court again emphasized that mere negligence or carelessness by Judge Claiborne was insufficient to sustain a conviction:[19]

> You may find that the defendant had knowledge that his tax returns contained false information if you find beyond a

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[17] Id., at 12.

[18] Id., at 15-16.

[19] Id., at 16.

> reasonable doubt that the defendant was aware of a high probability that the returns contained false information and that he deliberately avoided learning the truth. You may not find such knowledge, however, if you find that the defendant actually believed that the returns contained no false information, or if you find that the defendant was simply careless, negligent or grossly negligent.

On August 10, 1984, the jury found Judge Claiborne guilty of making a false statement on each tax return. The jury was polled after the verdict was announced, and the verdict was unanimous.

III. Those Matters That Specifically Were Litigated Should Be Treated As Established

In this motion, the House of Representatives respectfully moves the Senate to accept as determined those matters that actually were litigated at Judge Claiborne's criminal trial. Specifically, the House submits that it would be appropriate for the Senate to determine, without further proof, (1) that Judge Claiborne knowingly and intentionally made or subscribed a false statement on his 1979 and 1980 income tax returns; and (2) that, in filing those returns, Judge Claiborne did not rely in good faith, after full and honest disclosure, upon the actions of his tax preparers. While the Senate is not bound by the resolution of these issues in the criminal trial, there are compelling reasons why the Senate sitting as a court of impeachment should choose to do so. Since Judge Claiborne participated fully in that trial and, indeed, helped to frame the issues for resolution, acceptance of the jury's findings will cause no unfairness to him. At the same time, recognition of these findings will focus the issues to be resolved in the Senate, conserve important legislative resources, avoid inconsistent results, and establish a proper and reasoned precedent for future proceedings.

A. The applicability of the doctrine of collateral estoppel.

This motion is based, as is the motion for summary disposition of Article III of the Articles of Impeachment, on concepts of "finality" and "collateral estoppel."[20/] The general principle that is invoked is as much a matter of logic as it is a matter of law:

> [A] party who has had one fair and full opportunity to prove a claim, and has failed in that effort, should not be permitted to go to trial on the merits of that claim a second time.

Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation, 402 U.S. 313, 324 (1971), *quoting* Bruszewski v. United States, 181 F.2d 419, 421 (3d Cir. 1950). The common law of England recognized the principle "that a decision upon any material point is conclusive, though the subject-matter of the two suits may be different."

[20/] *See* Memorandum In Support Of Motion For Summary Disposition Of Third Article Of Impeachment (filed August 28, 1986).

Gilbert's Law of Evidence 7 (5th ed. 1791). The Supreme Court repeatedly has recognized the legitimacy of the doctrine of collateral estoppel. See Cromwell v. County of Sac, 94 U.S. 351 (1877); Southern Pacific Railroad Co. v. United States, 168 U.S. 1 (1897); Montana v. United States, 440 U.S. 147 (1979). The doctrine has been incorporated into the rules of practice and procedure in all 50 states. See 50 C.J.S. Judgments § 712 (1986).

The doctrine of collateral estoppel establishes in a later trial those identical issues that were resolved in an earlier proceeding. Generally, three conditions must be met. First, the issue must have been "actually litigated" -- that is, contested by the parties and submitted for determination by the court. Cromwell v. County of Sac, supra, 94 U.S. at 353 (collateral estoppel applies "only as to those matters in issue or points controverted"). Second, the issue must have been "actually and necessarily determined." Montana v. United States, supra, 440 U.S. at 153; Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326 n.5 (1979)(issue must be "necessary to the outcome of the first action"). Third, preclusion must not work an unfairness, such as that which may occur if the party to be bound lacked an incentive to litigate in the earlier proceeding. See Blonder-Tongue, supra, 402 U.S. at 333. The application of these principles

> requires examining the record of the prior proceeding, including the pleadings, evidence, charge, and jury instructions, and concluding "whether a

> rational jury could have grounded its verdict upon an issue other than that which the [movant] seeks to forclose from consideration."

United States v. Bowman, 609 F.2d 12, 17 (D.C. Cir. 1979), quoting Ashe v. Swenson, 397 U.S. 436, 444 (1970).

An examination of these conditions demonstrates the appropriateness of the doctrine of collateral estoppel in the instant case. First, the arguments of the parties and the evidence submitted at trial establish conclusively that the matters the House requests the Senate to accept were precisely those issues that were the focus of Judge Claiborne's criminal trial. Indeed, both parties agreed that these were the only matters that were in dispute.

Second, the trial judge explicitly instructed the jury that it could not convict Judge Claiborne unless it found, beyond a reasonable doubt, that Judge Claiborne acted willfully and intentionally, and not upon a good faith reliance on his tax preparers. These instructions were consistent with the fact that specific intent is an element of the offense. See United States v. Marabelles, 724 F.2d 1374, 1380 (9th Cir. 1984). The jury could not have convicted Judge Claiborne without making these findings.

Third, Judge Claiborne could not have had a greater incentive to litigate his cause. His freedom, and his reputation as a federal judge, were directly at stake.

B. Although it is not bound to do so, the Senate should utilize the established doctrine of collateral estoppel.

Sitting as a court of impeachment, the Senate has the inherent authority to establish the rules and procedures that will govern the impeachment proceedings. The Senate is not bound by judicial rules of procedure. As a court of impeachment, however, the Senate certainly is not precluded from choosing to apply established rules of practice that work no injustice to the person impeached. As set forth in the memorandum of the House of Representatives in support of its Motion for Summary Disposition of the Third Article of Impeachment, compelling reasons exist why the Senate should choose to apply the doctrine of collateral estoppel to bar relitigation of the specific issues actually litigated and determined at Judge Claiborne's criminal trial.

An application of the doctrine of collateral estoppel would prevent mere repetition of litigation that already has been concluded. It would eliminate the risk of inconsistent results. The doctrine would conserve the legislative resources of the Senate, and focus the attention of the impeachment tribunal on any issues that properly remain. Each of these reasons, more fully developed in other pleadings, compels an application of the doctrine in this case.

A determination by the Senate that matters actually litigated and resolved may not be contested would establish an appropriate precedent for future proceedings. There is no reason, either in this case or in any impeachment proceedings that may follow, simply to repeat pro forma matters that already have been resolved in a forum ideally suited to the determination of disputed issues of fact.

An application of the doctrine of collateral estoppel would not impair the obligation of the Senate to try the impeachment. The Senate itself must determine that the issues to be precluded actually were litigated in the prior proceeding. The Senate itself must examine the fairness and regularity of the earlier trial, to ensure that no unfairness to the person impeached would follow from preclusion. But where these conditions have been satisfied, the Senate rightfully may determine that further litigation on identical issues will not be permitted.

The House of Representatives respectfully submits that an application of the doctrine of collateral estoppel is appropriate here. The opening statements, the evidence presented at trial, the closing arguments, and the instructions make clear that the issues sought to be precluded were the principal focus of a fiercely contested proceeding. The fairness and regularity of the trial have been upheld on appeal; more importantly, the integrity of the process is apparent from any independent examination of the record and transcript in the case.

Judge Claiborne denied at trial that the acknowledged errors in his tax returns had been made with the intent to defraud the government. He repeatedly asserted that he had relied, after full and honest disclosure, upon the work of his tax preparers. The jury rejected these contentions, after defense counsel admonished in closing argument that the jury could convict only upon a finding that Judge Claiborne had committed perjury. The Senate should preclude Judge Claiborne from litigating again these same contentions.

IV. Conclusion

The House of Representatives respectfully requests that the Senate treat as established (1) that Judge Harry E. Claiborne knowingly and intentionally made or subscribed a false statement on his 1979 and 1980 income tax returns; and (2) that, in filing those returns, Judge Claiborne did not rely in good faith, after full and honest disclosure, upon the actions of his tax preparers, as each proposition was actually litigated and conclusively determined in his criminal trial.

Respectfully submitted,

THE UNITED STATES
HOUSE OF REPRESENTATIVES

By Nicholas D. Chabraja

Managers of the House of Representatives

Peter W. Rodino, Jr.	Hamilton Fish, Jr.
Robert W. Kastenmeier	Henry J. Hyde
Romano L. Mazzoli	Thomas N. Kindness
William J. Hughes	Michael DeWine
Dan Glickman	

Impeachment Trial Staff

Nicholas D. Chabraja, Special Counsel
David W. DeBruin, Associate Special Counsel

House Judiciary Committee Staff Participating In Impeachment Trial Preparation

M. Elaine Mielke, General Counsel
Alan F. Coffey, Jr., Associate Counsel
Judith Bailey, Counsel
Daniel M. Freeman, Counsel
Gary G. Goldberger, Counsel
Warren S. Grimes, Counsel
Joseph V. Wolfe, Counsel
Jonathon R. Yarowsky, Counsel

63-465 O--86----7

I.H

IN THE SENATE OF THE UNITED STATES

SITTING AS A COURT OF IMPEACHMENT

Impeachment of Judge Harry E. Claiborne	)	Motion #3

MOTION THAT SENATE CONVENE, AS A COURT OF IMPEACHMENT TO RESOLVE PRETRIAL MOTIONS FILED BY THE HOUSE OF REPRESENTATIVES

The House Of Representatives, through its managers and counsel, respectfully moves the Senate to convene as a court of impeachment to resolve two pretrial motions that have been filed by the House of Representatives: A Motion for Summary Disposition of the Third Article of Impeachment, and a Motion to Apply Collateral Estoppel to specific issues alleged in the First Two Articles of Impeachment.

Respectfully submitted,

THE UNITED STATES
HOUSE OF REPRESENTATIVES

By Nicholas D. Chabraja
Nicholas D. Chabraja
Special Counsel

Managers of the House of Representatives

Peter W. Rodino, Jr.	Hamilton Fish, Jr.
Robert W. Kastenmeier	Henry J. Hyde
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Judith Bailey, Counsel
Daniel M. Freeman, Counsel
Gary G. Goldberger, Counsel
Warren S. Grimes, Counsel
Joseph V. Wolfe, Counsel
Jonathan R. Yarowsky, Counsel

United States Senate
WASHINGTON, DC 20510

4 September 1986

II. MEMORANDUM FOR THE RECORD

On Thursday, September 4, 1986, at 10:40 AM, Oscar B. Goodman, on behalf of himself and the Honorable Howard W. Cannon, Counsels for the Impeached Person, Judge Harry E. Claiborne, delivered to the Committee on Impeachment of the United States Senate pre-trial documents consisting of the following items:

- "Notice of Filing;"
- "Pre-Trial Statement;"
- "Application for Issuance of Subpoenas;"
- "Motion To Declare "Rule XI...As Unconstitutional;"
- "Motion to "Dismiss the Articles...;"
- "Motion for Full and Fair Impeachment Trial...;"
- "Motion that Senate Convene, as a Court of Impeachment...;"
- "Motion to Designate...The Standard of Proof...;"
- "Motion for Bill of Particulars;"
- "Motion for Discovery;"

Copies of this filing are being distributed to the Senate Impeachment Committee Members and to their respective Staff Representatives on Thursday, September 4, 1986.

Signed:
Anthony L. Harvey

Anthony L. Harvey
Clerk
Committee on Impeachment

II.A

IN THE SENATE OF THE UNITED STATES
SITTING AS A COURT OF IMPEACHMENT

Impeachment of Judge
Harry E. Claiborne

NOTICE OF FILING

TO: Mr. Anthony Harvey
Clerk of the Committee on Rules & Administration
United States Senate (SR-318)

PLEASE TAKE NOTICE that on this 3rd day of September, 1986, the Honorable Harry E. Claiborne, Respondent, has posted to the Clerk of the Committee on Rules and Administration of the United States Senate, an original and thirty (30) copies of the following:

(1) Pretrial Statement with List of Witnesses and Exhibits;

(2) Application for Issuance of Subpoenas;

(3) Motion to Declare "Rule XI, Rules of Procedure and Practice in the Senate when Sitting on Impeachment Trials" as unconstitutional;

(4) Motion to Dismiss the Articles of Impeachment on the grounds they do not state impeachable offenses;

(5) Motion for full and fair impeachment trial before the entire Senate of the United States, or in the alternative, for dismissal; and Reply to House of Representatives' Motions #1 and #2 on file herein;

(6) Motion that Senate Convene as a Court of Impeachment to Resolve Pretrial Motions filed by the Honorable Harry E. Claiborne, Respondent;

(7) Motion to Designate "Beyond a Reasonable Doubt" as the Standard of Proof in the Impeachment Trial;

(8) Motion for Bill of Particulars; and

(9) Motion for Discovery.

Simultaneous with the posting of the above described documents, the same were served upon The United States House of Representatives through its Special Counsel, Nicholas D. Chabraja, by Federal Express delivery.

Respectfully Submitted:

HARRY E. CLAIBORNE

By

Oscar B. Goodman, Esq.
Honorable Howard W. Cannon
Attorneys for Respondent

II.B

IN THE SENATE OF THE UNITED STATES

Sitting As A Court Of Impeachment

In re	)	
	)	
	)	
	)	PRE-TRIAL STATEMENT
	)	
IMPEACHMENT OF JUDGE	)	
HARRY E. CLAIBORNE	)	

PRE-TRIAL STATEMENT OF THE HONORABLE HARRY E. CLAIBORNE

Respondent, the Honorable Harry E. Claiborne, by and through his counsel,* Oscar B. Goodman, Esq. and the Honorable Howard W. Cannon, respectfully submits this Pre-trial Statement with the intention to inform and educate the Honorable United States Senate, as well as to describe the testimony of witnesses and items of evidence which are relevant and material to the instant impeachment trial. The Statement is also designed to persuade the trier of fact to hear the entire case and not limit the presentation of evidence.

INTRODUCTION

Judge Harry E. Claiborne, on October 3, 1984 stood and told Judge Walter E. Hoffman "They have tried me for wrongs I did not commit." Judge Claiborne expressed the frustration which he and his attorneys faced in attempting to present the truth.

> I was hopeful that the Court would hear me out, so that you would know something about me. You don't know anything about me. You just know a little bit of what this was about... That's why I'm saying this, because you should know something about me.

---

*Michael V. Stuhff, Esq., has contributed in large part to the preparation of this pre-trial statement.

Judge Claiborne also said that "Money meant nothing to me." The evidence to be presented to the Senate will confirm that Judge Harry E. Claiborne spoke and testified truthfully. His history, his actions and his accomplishments demonstrate that this statement was no empty rhetorical boast. It was a source of his strength and it was the weakness which allowed cunning and interested and devious men to frame him for crimes he did not commit.

Some men work hard to make a lot of money. Others make a lot of money because they work hard; money to them is secondary. A disinterested and honest examination will establish that Judge Harry E. Claiborne is clearly a member of that remarkable and smaller latter group. He was always an ardent supporter and provider of legal services to the poor. In 1972 he received the annual award from Clark County (Las Vegas) Legal Services in appreciation for his devotion in such efforts. During thirty years of practice in a boom town he became financially comfortable but not wealthy. He never had or cared for tax shelters or investment plans, a Keough plan, a 401K or even an IRA. Most of his savings went into plain old-fashioned and unadorned bank accounts and certificates of deposit. He regularly overpaid his taxes and failed to seek exemptions to which he was entitled. He did not mind that the extra money went to his government. In 1978 he treated the sale of an interest in land for $30,000.00 as ordinary income rather than as a capital gain. He made generous allowances for his former associates when he dissolved his practice. His net private income for eight months of private practice in 1978 amounted to a modest $67,000.00.

Portrait of a Judge

Judge Claiborne's folksy Arkansas twang and colorful style first catch the attention of his chroniclers. They are the traits most easily observed and often written about. The real Harry Claiborne is more interesting and complex than the image of the stereotyped "country boy" he cultivated and enjoyed.

Success for Harry Claiborne had to come from more than superficial style and a folksy drawl. His clients prevailed not through plea bargains and deals brokered in the smoke filled offices of "good old boys" but in hard fought jury trials. As an attorney who practiced throughout the sparsely populated State of Nevada, Claiborne developed a reputation as one who showed up well-prepared and on time. As a judge, he chided any lawyers who did not.

The authoritative Almanac of the Federal Judiciary summarizes the comments of attorneys from both sides who appear in Federal Courts. In its 1985 edition it states:

> LAWYERS' COMMENTS Courteous to lawyers and litigants. Not influenced by the identities of the parties or the lawyers. Tends to have a current docket; accommodates emergency requests. Has knowledge of current legal developments and a good understanding of the issues in both complex and ordinary cases. Generally rules on motions promptly and knowledgeably. Does not tend to push too hard for settlement. Imposes average to heavy sentences. During trial, does not dislike a lawyer's making numerous objections and somewhat strictly controls a lawyer's questioning of and general behavior toward witnesses. Additional comments: "Currently recused pending outcome of his criminal case." "Polite, but tough on ill-prepared attorneys."

Claiborne's less publicized thoughtful, scholarly bent and commitment to personal liberty even despite risk and sacrifice to himself are perhaps best observed in a 79 page memorandum opinion he crafted in 1983 even though he knew at the time he himself was a target of then FBI Special Agent-in-Charge Joseph Yablonsky. After poring over historical records, Western European evidence law, the statements of Talmudic and Christian leaders and scholars including Simon Wiesenthal, famed Nazi-hunter, Roman Catholic Bishop Norman McFarland and canon law scholars, and all the relevant reported American precedents, Claiborne quashed a subpoena issued by the Strike Force attempting to compel a son to testify against his father. In Re Agosto 553 F. Supp 1298 (D, Nev. 1983).

Claiborne characteristically closed the thoughtful, well researched and controversial decision with a brief quotation from Ninth Circuit Judge Anthony Kennedy's stirring dissent in a similar 1980 case:

> "Indifference to personal liberty is but the precursor of the State's hostility to it."

"Personal liberty" was more than an ideal to which the son of an Arkansas farmer and a schoolteacher mother paid lip service. Known for his representation of notables such as Frank Sinatra, Dean Martin, Judy Garland, Howard Hughes and Carol Burnett, Claiborne regularly represented the poor and the oppressed without charge before and after the U. S. Supreme Court mandated the appointment of salaried public defenders or tax-paid attorneys. A former Las Vegas police officer himself, he had a standing offer to represent any policeman in trial at no cost, and did so.

In 1949 he headed a state-wide referendum drive to adopt a probation law in Nevada. Until that time, Nevada had no provision for probation. Claiborne formed committees to support the proposition and raised the money necessary to finance the state-wide campaign. He made hundreds of speeches throughout the sparsely populated state urging Nevada voters to support the referendum. After its passage, Claiborne was asked by the Governor to organize and set up the first Department of Probation in the State.

Claiborne liked people. A voracious reader of history, biography and poetry and a keen, interested and sympathetic observer of human nature and institutions, he became one of those rare and valued advocates who represents sinners without representing sin. He developed a respect and understanding for the strengths and weaknesses to which mankind is heir. He understood and shared human frailties. As a student of theology, he once considered becoming a Baptist minister. He quit drinking and smoking without fanfare or ostentation.

In 1973, Claiborne told an interviewer that he never considered himself smarter than anybody else--he just claimed to work harder than any bastard living.

He became a close friend of crusading Washoe County (Reno) District Attorney Bill Raggio when he opposed him in defending an indigent charged with murder. The trial took weeks and Claiborne spent more than the county paid him. But when

Claiborne was attacked, Raggio volunteered to aid in the Judge's defense at Claiborne's own trials.

Claiborne's roots in his Arkansas farm upbringing taught him to be self-sufficient. Building, planting occupied much of his limited leisure time.

He had come to Las Vegas in 1941, a volunteer in the Army assigned to the Army Air Corps at the remote desert site which later became Nellis Air Force Base. At the end of WW II, Claiborne settled in the tiny community of Las Vegas. He joined the Las Vegas Police Department. In 1946 he passed the Nevada Bar.

In 1947, long before MADD made it fashionable or popular to do so, he became known as a crusader against drunk driving as Chief Deputy District Attorney for Clark County.

In 1948, he hung out his shingle in a small store-front office that stayed open for thirty-one years until he became a judge.

He left the office work and the lucrative but mundane drafting of contracts, real estate transactions, uncontested six-week divorces, and tax practice to others. He specialized in trials. During the 50's he was booked up two years in advance with a trial starting every Monday. When he thought he was right, he didn't care what others thought. He never was afraid to state his opinion. On his desk was a sign that summed up his style, "I Don't Give A Damn How They Do It in L.A."

His anger and strong language were reserved for those who abused their authority, petty tyrants, hypocrites, the whitened sepulchres who set themselves up as holier than their brothers and sisters. He was genuinely friendly toward those whom he could have ignored or dominated, he was unfailingly polite to subordinates, staff and lower echelon employees. One former jail employee relates that Claiborne, unlike lesser advocates, would never attempt to throw his weight around when he showed up early in the morning to secure the release of some poor miscreant. He earned and has kept the respect of the personnel in the offices of the Clerk, the U.S. Marshall, the U. S. Attorney's Office and the Federal Defender.

To a great extent, his celebrated "toughness" comes from being at peace with himself. A genuinely humble man, he described to one reporter the day before he surrendered to Montgomery, Alabama's Maxwell Air Force Base the valuable lessons he had learned in the three years between indictment and prison. "The one thing I appreciate more than anything else is that I've gotten 5,000 cards and letters from people supporting me. You don't know how that makes you feel."

Did He Violate The Law?

Judge Claiborne was indicted for seven felony charges on December 8, 1983. He was convicted of two counts. The two tax counts of which he was convicted in October, 1984 by a jury charged that Judge Claiborne intentionally made false statements in his 1979 and 1980 Federal Income Tax returns.

The evidence at trial was that Judge Claiborne kept records of all of his earnings and expenses and gave those records to his accountants.

Documents and testimony suppressed by the prosecutors at both his trials indicated that the government knew since at least

June 17, 1983 that he had given his accountants a complete listing of his fees received in 1980 and that the employee assigned by the tax consulting agency to be primarily responsible for the return's preparation admitted that she was confused about how to treat it when she completed the return.

Judge Claiborne had also been charged (the charge was subsequently dismissed) with making a false statement in regard to his 1978 tax return. Evidence at the first trial showed that Judge Claiborne's accountant had made a number of errors in the computation of Judge Claiborne's 1978 return. Judge Claiborne's income for 1978 was OVERSTATED by $25,067.66.

Judge Claiborne's 1978 income was overstated because, among those errors, his accountant treated his sale of his legal library as a gain rather than a loss, and erroneously counted several checks, including a judicial salary check twice.

On his 1980 tax return, Judge Claiborne's accountant failed to report prepayments of his taxes in the amount of $23,329.00. That omission in favor of the government and the IRS, not in Judge Claiborne's favor, was quickly spotted by the IRS and resulted in a greater refund that Judge Claiborne's accountant had requested.

The many serious errors by his accountants in the computation of his taxes, some in favor of the government, some in his favor, contradict any conclusion that Judge Claiborne willfully defrauded the IRS. However, despite the clear showing that the people Judge Claiborne retained to do his tax returns made many errors, the prosecution was bound and determined to obtain a conviction for intentional false statements.

For example, Judge Claiborne established that on at least two occasions, he had signed his tax returns in blank and left them with his accountant. He had done so because he was leaving town on business close to the filing due date. He trusted his accountant to properly compute the tax and complete the forms.

The Federal prosecutor, in a show of righteous indignation pointed out the fine print above the signature block on the 1040 form. The print which appears on every 1040 form states that the taxpayer has read the form. The prosecutor used that circumstance as part of his "proof" that the Judge intentionally made "false statements" by signing returns in blank.

The uncontradicted testimony established that throughout his career, the Judge's standing instructions to his accountant was to resolve any question on his taxes in favor of the government.

Judge Claiborne Maintains He Was "Framed"

"Framed!!"--That is a harsh and direct accusation. It is not idly made.

If there was no basis for such an accusation, the dishonest prosecutors would not have been so afraid. A major goal of the clique of prosecutors who procured Judge Claiborne's conviction had been and is an attempt to stifle any inquiry into their alleged wrongdoing. So far they have been successful. They have had power and public opinion on their side. Judge Claiborne has only had truth, justice and guts. Only after the forthcoming impeachment trial proceedings will we know which shall prevail-- the American ideal that you cannot stop one honest man with the Truth who will stand up against seemingly overwhelming odds or the cynical and prevailing attitude that "you can't fight City Hall"--or the Federal government.

The government's prosecutors spent over 100 hours coaching their crucial witness on the tax charges, Claiborne's former accountant Joseph Wright. Wright who was allowed to practice public accounting only because he had been "grandfathered" in, changed his testimony dramatically from the first trial (which resulted in a mistrial) to the second. In the first trial, Wright admitted that he had sometimes misplaced files or papers. In the second, he denied that anything like that ever occurred. Between the first and second trial, sometime during that coaching by government prosecutors, Wright changed his mind about who had calculated Claiborne's estimated tax payment for 1979. At the first trial, he admitted that Claiborne must have obtained the figure from him. At the second trial, he claimed that his client arrived at it himself. He denied ever having received a crucial letter from Claiborne of April 11, 1980 detailing the judge's income used in that calculation.

WITHHOLDING OF EXCULPATORY EVIDENCE

Prosecution witnesses Joseph Wright and his wife Constance Wright were adamant that no documents were ever misplaced or lost in their accounting and bookkeeping business. This testimony was vitally important because of Mr. Wright's testimony at the second trial that he had never seen the letter of April 11, 1980 informing him of Defendant's total legal fees for 1979 until approached by one of the defense attorneys before the first trial. After the second trial was concluded, Judge

Claiborne's attorneys discovered that the trial judge (who had elected to review in camera the material produced by Government had a packet of reports of 302's (a designation of a form used by FBI agents to report on investigations and interviews) and analagous documents produced by IRS investigators which had been conveyed to the trial judge during the first trial including reports of interviews of the Wrights which the judge said he had not previously examined for release to the defense.

A report of an interview of February 10, 1983 disclosed that one of the Wrights talked about records being "either misplaced or inadvertently destroyed." This corroborates Joseph Wright's admission at the first trial which he adamantly denied at the second trial after coaching by Justice Department and IRS agents. It goes directly to the heart of the key issue--whether the April 11, 1980 letter had been misplaced or inadvertently destroyed. An interview on February 16, 1983 of the Wrights by Agent Skelton (IRS assigned to Prosecutor Shaw) and FBI Agent Jessinger contained the following paragraph:

> Wright kept the photocopies of the customer receipts. Those copies and the journals prior to 1976 were thrown away when Wright moved to his office from South Commerce in August of 1981. At that time Wright and Carl Apple combined their accounting practice.

When defense counsel did ask Wright about the loss of documents, Wright testified that no document relating to Judge Claiborne's tax matters had ever been lost or mislaid. On an issue as close as that of the April 11, 1980 letter, with its deep significance, the examination of Wright would have been more pointed, and much more telling, if the jury was aware of his former reports of lost or misplaced, and even destroyed documents.

Other material useful to the defense included a report, contrary to Wright's trial testimony of the care in which he questioned his clients for information, that it was not his job to cross examine his clients; a reference to one Ken Swanson who had some participation in the preparation of returns and from whom defense counsel would have sought information; a Wright statement that there was not much work to do after Defendant became a judge--a more benign description than Wright gave at trial.

Clearly, the trial judge violated his obligation in not releasing the material to the defense, or in engaging in an adequate inquiry into the nature of the documents under judicial standards pertaining to the production of documents.

The Motive

Why would the prosecutors target the judge if he was not guilty of something?

Harry Claiborne has never been shy. As a Federal judge, Claiborne charged that the Department of Justice Strike Force in Las Vegas used illegal and abusive practices to make its cases including 25-30 illegal wiretaps. The purpose of a "Strike Force" office was to target organized crime and major criminal violators.

But the Judge was even more concerned about the type of cases which the Federal prosecutors were bringing. Claiborne was known to be a tough sentencer of hardened criminals and was particularly severe toward those convicted of smuggling or dealing in wholesale quantities of drugs. Claiborne was unhappy with the Strike Force because he thought the prosecutors were leaving the big guys alone. He felt that they were going after "little fish" while ignoring the major criminals who preyed on the citizens of Nevada. Claiborne was particularly critical of a massive series of "sting" operations which netted ghetto residents who had been using or accepting food stamps in payment for such items as cigarettes or gasoline.

Claiborne was outraged that undercover agents would solicit West Las Vegas (ghetto) service station operators to sell a few dollars worth of gasoline to make a Federal prosecution. He was upset with the Strike Force because he saw the Court's calendar jammed with such cases. He refused to become a rubber stamp for prosecutors.

The feisty judge also was prone to Trumanesque descriptions and called the Strike Force "rotten bastards" and a "bunch of crooks."

Judge Claiborne's relations with the U.S Attorney's office (as distinct from the Strike Force) was unaffected. Ed Kane, the former Chief Criminal Deputy for the United States Attorney based in Las Vegas stated that, "Harry Claiborne is the best judge I have ever practiced before--state--federal or local. If he had been acquitted on a Friday, I would not have had any hesitation about going before him for the government on Monday."

Ruth Cohen, another assistant U.S. Attorney tried her first major case before Harry Claiborne. She states, "I will say, even as an assistant U.S. Attorney, that it was always a joy to work in his courtroom. He has a terrific sense of humor. He used to always tell one of his famous stories to the attorneys after the Court. I've always liked the man very much, always will. I feel very badly about it [the conviction and imprisonment]. I'm sure he'll do fine. He's tough."

The Strike Force and FBI Special Agent-in-Charge Joe Yablonsky, were not so open-minded. They considered Claiborne an enemy.

Joe Yablonsky boasted that he had been sent to Las Vegas to plant the American flag in the desert. He boasted as well to many, including attorney Bruce Lyons, president of the National Association of Criminal Defense Lawyers, that he was going to hang Judge Harry Claiborne's picture on his wall along with others he had targeted and convicted.

Yablonsky regularly and routinely inquired of informants, potential informants, defendants and attorneys concerning Judge Claiborne.

After several abortive attempts to set up one of his "sting" operations, Yablonsky abandoned his initial attempts to set up a bribe or sting of the judge.

Quite simply, such an attempt could only be successful if the judge could be convinced to be corrupted. Since that was not likely, Yablonsky concentrated on finding somebody, anybody, who could be induced to claim that a bribe had occurred in the past.

Yablonsky found such a person in the notorious fugitive pimp, Joe Conforte. The newfound allies began negotiations for the purchase of perjured testimony.

The Conforte Story

It is not necessary to argue or prove that Joe Conforte, the government's star witness, lied to the Grand Jury and to the only trial jury which heard his testimony.

In response to a question from the special appeals panel Justice Department Prosecutor Steven Shaw admitted that Conforte had lied. Shaw argued that he and other prosecutors did not know he was lying when they began talking to him.

Despite Shaw's admission that Conforte lied to them and to the Courts, the Justice Department has taken no steps to charge Conforte with perjury. It has taken no steps to revoke his probation which was based upon his agreement to testify "truthfully" against Judge Claiborne.

Was the Justice Department really deceived by Conforte, or did Claiborne's pursuers deliberately purchase perjured testimony in order to bag their prey?

Conforte had fled to Brazil, after being convicted and sentenced to twenty years, where he was living a life of luxury in Rio de Janeiro. Yablonsky dispatched Special Agent Dan Camillo to woo him back if he would incriminate Judge Claiborne. Conforte got a tax break estimated variously between $13 to $16 million, a reduction of his sentence from five years to one year actual time served (which was in violation of Rule 35, Federal Rules of Criminal Procedure), immunity for his flight, immunity for any role in the homicide of Oscar Bonavena, the boxing champion killed at the Mustang Ranch after an alleged affair with Conforte's wife, Sally, a reduced concurrent state prison sentence, and dismissal of a habitual criminal charge which would have made him liable for a life sentence.

When Conforte realized that he could purchase a "free ticket" back to the United States, and preserve his lucrative brothel and financial resources from the telling of a tale implicating Chief Judge Harry Claiborne, Joe Conforte tried to oblige his newfound allies.

Conforte told the Federal prosecutors that he had paid Judge Claiborne a $30,000 bribe to quash subpoenas which had been issued to two of his prostitutes at the Mustang Ranch. The prostitutes had been subpoenaed in connection with an investigation of alleged voter fraud in Storey County, Nevada, the sparsely populated county famous for Virginia City and the Mustang Ranch.

The two prostitutes were represented by two private attorneys. The Federal government was represented by two assistants in The United States Attorney's Office, Leland Lutfy, now a private attorney in Las Vegas, and Philip Pro, now a United States Magistrate stationed in Las Vegas, Nevada.

There was nothing in the record of the Grand Jury subpoenas to indicate that Joe Conforte was the target of the subpoenas or that Joe Conforte had hired the two attorneys for the women.

Judge Claiborne promptly ruled against the prostitutes. Their attorneys filed a routine motion for reconsideration and Judge Claiborne routinely stayed his order until the reconsideration could be acted on. The government's attorney, Leland Lutfy, requested an extension to file his legal brief of points and authorities because of his pressing caseload.

Judge Claiborne eventually prodded Lutfy by letter to get his opposition filcd. Claiborne again ruled in favor of the government and denied the Motion which the prostitutes' attorneys had filed.

The prosecutors who claimed to believe Conforte's tale had access to all this information and more when they presented the perjured testimony of Joe Conforte to a Federal Grand Jury in Reno on December 7, 1983.

Conforte told the Grand Jury that he had driven to Judge Claiborne's apartment at the Sundance West apartment complex. He detailed a description of a breakfast bar or counter which separated the kitchen and the living room, over which he purportedly conversed with the Judge. There were chairs or stools, Conforte said, at the counter. He told the Grand Jury and the trial jury at the first trial about the conversations and the notes passed over that counter, notes supposedly to avoid being detected by the possibility of eavesdropping devices. Conforte testified that the Judge wrote, "I need $30,000 and don't worry about your case," on a yellow pad that was passed back and forth across that counter and then ceremoniously burned.

The Prosecutors knew that to be false.

There were a number of similar apartments in Judge Claiborne's apartment complex. Some of those apartments did indeed have the sort of breakfast bar/pass-through which Conforte described. Conforte and/or his handlers in the FBI had looked at such apartments.

Fortunately for Judge Claiborne, the prosecutors and Conforte, assumed that all the apartments in the complex had such a breakfast bar/pass-through separating the kitchen and living room. In fact, some of the apartments, including Judge Claiborne's, had a solid wall and a closet in the pertinent location. The conversation Conforte described would have to have taken place through a solid wall and a closet in front of that solid wall.

The government had originally claimed that the conversation and bribe had taken place on December 15, 1978. The Judge's travel vouchers and airline tickets and other official records showed that he had left Reno for Las Vegas on the 15th of December shortly after noon and could not have been present in Reno. Then, at the beginning of trial the government and Conforte changed their story and changed the date. The Judge had been bribed by Conforte it was claimed, in Reno, in the Judge's apartment, on the evening of December 12, 1978. Conforte testified that he had taken the $30,000 from a safety deposit box in the Nevada National Bank in Sparks, adjoining Reno that same day. By the time of trial the Prosecutor's knew from subpoenaed bank records that Conforte had not been into that safety deposit box on December 12, 1978.

More dramatically, United States State Department records conclusively established that Joe Conforte had been in New York City late in the afternoon of December 12, 1978.

Conforte had personally picked up his renewed passport on an emergency basis. Conforte had left for Brazil the following day. It was quite literally physically impossible for Conforte to be in New York City and Reno simultaneously.

On December 12, 1978, at the same time that he was supposedly passing notes to Conforte through solid walls, according to the Shaw/Yablonsky scenario, Judge Claiborne was meeting and dining with a Justice of the Nevada Supreme Court, Al Gunderson.

Conforte's Fraud Claim

The government prosecutors also claimed that Judge Claiborne "defrauded" the wily and street-wise Conforte. Joe Conforte was on Appeal to the Ninth Circuit Court of Appeals in San Francisco for his conviction of tax evasion. Judge Claiborne as a mere District Court Judge, and a new one at that, had no jurisdiction over the Appeals case.

The prosecutors alleged that as "part of the scheme to defraud" Conforte, Claiborne falsely claimed he would secure the reversal of Joe and Sally Confortes' conviction by bribing one or more of the judges of the United States Court of Appeals. Claiborne supposedly received $55,000 from Conforte through this "fraud."

According to the prosecutors and Conforte, the gullible, defrauded brothel owner flew to Portland, Oregon in the company of an underage girl whom he had persuaded to give up the career of prostitution because she was "too sweet." Judge Claiborne was temporarily assigned to the Federal Court in Portland to hear a case.

Conforte claimed he stayed overnight in a rundown motel with over $55,000 in cash in his possession. He said that he gave the money to Judge Claiborne in a furtive meeting in a parking garage of a hotel so that he and the Judge would not be seen together.

Claiborne remembered his former client seeking him out in Portland and buttonholing him in the corridor of the Federal Courthouse. Other independent witnesses confirm that Conforte came to the courthouse. Claiborne had work to do, did not want to be bothered by his former client, and did not invite him into his chambers because he knew it would be more difficult to dislodge him.

The government's theory of "fraud" by Claiborne against Conforte, requires one to believe that Claiborne thought he could successfully "double cross" Conforte. The government theory requires one to believe that Conforte actually believed that a newly installed Federal District Judge could and would corrupt Appeals Court Judges. In their blind ambition to manufacture a case, any case against Claiborne, the Federal prosecutors carried a "willing suspension of disbelief" to its extreme limits.

However, the prosecutors did not need a conviction on the Conforte-related counts. Once those allegations were presented to the Grand Jury in Reno, the fourth grand jury to hear evidence against Claiborne, the prosecutors achieved their purpose. The Conforte allegations so inflamed the grand jury into believing that Claiborne was a corrupt judge, that they voted to indict on the tax charges as well. Three prior grand juries, one in Las Vegas and two in Portland, which had not been exposed to the purchased perjury of Conforte, had refused to indict Claiborne for any offense.

If there had not been such prejudice to Judge Claiborne from the charges of Conforte, so palpably false in retrospect, there very likely would not have been a criminal indictment on the tax charges. It was a smooth, slick and cunning tactical maneuver by the Judge's pursuers.

Despite the admission of prosecutor Steven Shaw at the appellate argument, and the overwhelming proof of Conforte's perjury at the first trial, the special panel appointed by Warren Burger refused to concede in its published opinion that Conforte perjured himself. The special panel dismissed as "speculation" Judge Claiborne's contention that the grand jury which indicted him was so prejudiced by the presentation of Conforte that they considered him a corrupt judge and indicted on all counts presented to them. 765 F.2d at 792.

The Mail Cover

It is far easier to understand the attitudes of those Federal agents pursuing Claiborne and to realize that they would stop at nothing if one considers the "mail cover" accidentally discovered by Judge Claiborne in 1981. The incident also confirms that fortunately the overzealous and overreaching Federal agents are not immune to mistakes. Judge Tom O'Donnell, a state court judge in Clark County, Nevada, was one of Judge Claiborne's closest friends.

In 1981, Yablonsky was pursuing one of his theories that O'Donnell and Claiborne had conspired to fix the case of a local bookmaker, Gus Gallo, who had been convicted of a gambling related offense and received a $25,000 fine in Claiborne's court. Both O'Donnell and Claiborne realized that they were being followed and watched almost all the time.

Then strangely enough, on the morning of March 19, 1981 Claiborne opened his American Express bill in its envelope from the American Express Company. What to his wondering eyes should appear but his bill and a bill of his friend Judge Tom O'Donnell.

A "mail cover" is nothing new. It was a common, and illegal, technique utilized by the FBI and CIA throughout the 60's and 70's, and in the case of Claiborne and O'Donnell, at least into the 80's. The agents who were conducting the "mail cover", like those who participated in the burglary of Judge Claiborne's home, were on a "fishing expedition." They did not know whether they would find anything.

If they did find evidence of some wrongdoing, they could always claim they had a "confidential informant" or they could innocently send a subpoena for documents they knew to exist. In their minds, they could pile circumstance on circumstance to manufacture the fabric of a theory of guilt from the flimsiest of threads.

But they failed. While examining the mail of the two judges without any legal justification, an agent carelessly put two of the similar looking bills into the same envelope. The odds of American Express having mixed up the bills of two close friends who just happened to be under intense FBI scrutiny are, as Claiborne's letter to the company pointed out, very remote.

The "Mail Cover" is important not only in and of itself. It establishes a pattern and a predilection to use illegal means, a predisposition which also manifested itself in the burglary of Judge Claiborne's home in a similar "fishing expedition" searching for some circumstance or document which could be extrapolated into a theory of some crime.

The Burglary

Perhaps the most shocking allegation to surface in the vendetta against Claiborne, originated from a meeting between informant Cliff Isbell and private investigator Lake Headley in September of 1984.

Isbell had sought the meeting with Headley in an effort to help out Isbell's friend and close associate, police Sgt. Dennis Caputo. Headley at that time was pursuing a defamation and civil rights action against the Las Vegas Metropolitan Police Department and a private investigator, Bob Griffin, who had circulated alleged false "intelligence" information about him. Sgt. Caputo wanted his name kept out of the newspapers in the suit.

As a private investigator, Headley had worked on one of Isbell's cases in the 60's. He had last seen Isbell in 1969

In the meeting at a restaurant on September 29, 1984, the Isbell boasted to Headley of his exploits during the intervening fifteen years.

Isbell tried to impress on Headley how close he was to Metro during the tenure of one Sheriff John McCarthy. He confirmed there was something to Judge Claiborne's and Headley's suspicions that a "black bag" job had been committed on Claiborne's home, and promised he would talk to Sgt. Caputo about it.

Headley pursued the lead vigorously.

Isbell and one James D. Johnson first became informants for the Las Vegas Metropolitan Police Department's Intelligence Division shortly after the election of Sheriff McCarthy. The commander of Intelligence and mainspring of McCarthy's "political hit squad" was Kent Clifford who had been promoted into that position from detective, bypassing the ranks of Sergeant, Lieutenant, and Captain.

Isbell particularly became a de facto member of Commander Clifford's "political hit squad," which harrassed anyone who threatened to oppose the sheriff in McCarthy's bid for re-election.

Commander Clifford introduced Isbell and Johnson to the Joseph Yablonsky who had recently been transferred to Nevada, in connection with an anticipated "sting" operation which Clifford's department was unable to finance. The plan required the purchase, with government funds, of a gambling establishment, the Rosebowl Race and Sports Book, to be operated by Isbell and Johnson and an undercover FBI agent.

The Rosebowl "sting" was abandoned when Abscam type funding was cut off after the adverse publicity generated by the use of Murray Weintraub in the Abscam operation and the losses caused to innocent persons.

Despite the collapse of the contemplated Rosebowl sting, Yablonsky on repeated occasions expressed his desire to "get" two prime targets. One was Nevada's Senior Senator, Paul Laxalt; the other was Chief Judge Harry e. Claiborne whom he derisively referred to as "the Arkansas hillbilly."

Judge Claiborne's Position As To His Tax Returns For The Years 1979 And 1980.

That Judge Claiborne made full disclosure of all of his income to his tax preparers, and that he had the right to rely on their expertise in the preparation of his tax returns.

That, at most, Judge Claiborne was negligent, but that his conduct was not willfull, and therefore not criminal.

That had he been any other tax-payer, his treatment would have been different; however, because he was targeted, as has been heretofore shown in the instant Pretrial Statement, he has been subjected to ignomy and scorn despite being innocent.

Respectfully Submitted:

HARRY E. CLAIBORNE

By

Oscar B. Goodman, Esq. and
Honorable Howard W. Cannon

Attorneys for Respondent

EXHIBITS

1. 1980 Judicial Ethics Disclosure Form disclosing $88,500.00 in non-judicial income.

2. Letter of April 11, 1980, to J. Wright from Judge Harry E. Claiborne.

3. $8,000.00 check to IRS from Judge Harry E. Claiborne dated April 11, 1980.

4. IRS Request for Extension to File dated April 11, 1980, by Judge Harry E. Claiborne.

5. Judge Harry E. Claiborne W-2 for 1979.

6. $2,500.00 check to IRS from Judge Harry E. Claiborne dated April 11, 1980.

7. Summaries of J. Wright and Constance Wright's statements to IRS and/or FBI agents on February 10, 1983, stating that papers may have been lost or inadvertently destroyed.

8. Summaries of J. Wright's statement to IRS and/or FBI agents on February 16, 1983.

9. Correspondence (three letters) between Judge Harry E. Claiborne and Judge Tom O'Donnell and American Express.

10. "Yellow Sheet" given to Jerry Watson by Judge Harry E. Claiborne in which $88,500.00 income was disclosed.

11. Amended tax returns of Judge Harry E. Claiborne for 1979 and 1980.

12. Testimony of J. Wright at first trial admitting loss of records. Recanted at second trial after coaching by IRS agents.

13. Drawings of interior of and area surrounding home of Judge Harry E. Claiborne by James D. Johnson.

14. Judge Harry E. Claiborne's personal diary.

15. Compendium of newspaper articles regarding feud between Yablonsky and Federal Judges.

16. FBI and Department of Justice memoranda and surveillance logs obtained by Charles Lee pursuant to FOIA/PA detailing "sting" and harrassment as a result of Lee's refusal to collaborate with Yablonsky in the fabrication of charges against Judge Claiborne.

17. Dissenting opinions of Judges Ferguson, Reinhardt, and Pregerson at 718 F.2d 1325, 1327, and 1335 respectively.

18. Trial transcript of october 2, 1984, p. 23 (wherein Judge Walter Hoffman's discloses the existence of exculpatory matters which had not been provided in a timely matter to the defense).

19. Harry E. Claiborne's post trial Exhibit "1".

20. IRS Agent Archie Banburry memo of October 2, 1981.

WITNESS LIST

Judge Harry E. Claiborne will present the testimony of the following witnesses at trial before the United States Senate sitting as a Court of Impeachment in this matter.

1. Judge Harry E. Claiborne, Chief Judge of the Federal District Court for the District of Nevada, will testify fully in regard to the course of the investigations, indictment, trials, and convictions and in regard to his instructions to accountants and those holding themselves out as accountants or tax preparers.

2. Joseph Wright, public accountant, Las Vegas, Nevada, will be presented. Wright will be questioned in regard to statements attributed to him in documents withheld from Judge Harry E. Claiborne until after the conviction. He will be questioned in regard to inconsistent testimony offered at both trials in which he testified. His motive to avoid IRS scrutiny of himself and his other clients for irregularities will be questioned as well as his bias or prejudice. Judge Claiborne will establish by examination that Joseph Wright did not provide competent service, lost bank records, and other documents which Judge Claiborne was required to replace, and failed to provide appropriate advice and service in regard to elementary methods of reducing tax liability. He will testify that Judge Claiborne's standing instruction was to give every benefit regarding taxes to the Government.

3. Judy Ahlstrom, Las Vegas, Nevada, will testify that she delivered the April 11, 1980, letter, with its enclosures, to Joseph Wright at his office on Commerce Street in Las Vegas,

. . .

Nevada, which letter reported to Wright, Judge Claiborne's total income for 1979.

4. Annette Quintana, Esq., Las Vegas, Nevada, whose testimony on this matter was precluded by Judge Hoffman, will testify that as Judge Claiborne's former associate, as part of the arrangement and agreement between herself and Judge Claiborne in winding up the business, she instructed Joseph Wright to make parallel entries regarding funds shared by her and Judge Claiborne for his pre-appointment work on cases. She will testify that Joseph Wright acknowledged those instructions.

5. Jerry D. Watson, Las Vegas, Nevada, will testify in regard to his role in his tax preparation business, his participation and the participation of Charlotte Travaglia in the preparation of Judge Harry E. Claiborne's 1980 tax return. He will testify in regards to Judge Claiborne's inquiry about the 1980 tax refund and his assurances and statements to Judge Claiborne. He will testify to prosecutional pressure being placed upon him regarding his testimony that Judge Claiborne disclosed his entire income to him for the year 1980.

6. Charlotte Travaglia, Las Vegas, Nevada, will testify in regard to her participation in the preparation of Judge Claiborne's 1980 tax return and her notations on the "yellow sheet" in which the income of $88,500.00 was disclosed. She will testify that she did not believe she handled the preparation properly and that she asked Jerry Watson for his assistance.

7. Ginny McIlwaine, Las Vegas, Nevada, Judge Claiborne's former secretary while he was in private practice, will testify about the normal procedures for maintaining records

and of the normal contacts between herself and Constance Wright, Joseph Wright's wife and secretary, in regard to Judge Claiborne's bookkeeping.

8. Kenneth Swanson, Las Vegas, Nevada, former employee of Joseph Wright, will testify in regard to his participation in the preparation of Judge Claiborne's tax returns and in regard to procedures and practices in Wright's accounting practice.

9. Norico Lowe, Las Vegas, Nevada, a former IRS employee of the Las Vegas office, will testify regarding the treatment of Judge Harry Claiborne's case by the IRS and about the removal of IRS Director Gerald Swanson to clear the way for the return of Joseph Conforte.

10. Lake W. Headley, Jr., Las Vegas, Nevada, will testify concerning his investigation of the burglary of Judge Harry E. Claiborne's residence by law enforcement agents, FBI Agent Steve Rybar, Las Vegas Metropolitan Police Department Sgt. Dennis Caputo, and informants Clifford D. Isbell and James D. Johnson.

11. Clifford D. Isbell, Newport Beach, California, will testify regarding his association and contacts with former FBI Special Agent-in-Charge Joseph Yablonsky, Special Agent Steve Rybar, Metro Sgt. Dennis Caputo, and others. Isbell will be questioned concerning his knowledge of and role in the burglary or surreptitious entry into Judge Claiborne's home for the purpose of obtaining leads or gathering information.

12. James D. Johnson, Las Vegas, Nevada, will testify regarding his association and contacts with former Metro Intelligence Commander Kent Clifford and his introduction and

subsequent contacts with former FBI Special Agent-in-Charge Joseph Yablonsky leading to his participation in the burglary of Judge Harry E. Claiborne's home.

13. Sgt. Dennis Caputo, Las Vegas Metropolitan Police Department, will be called to testify in regard to the nature of his relationship to former Metro Commander Kent Clifford, former FBI Special Agent-in-Charge Joseph Yablonsky, informants Cliff Isbell and James Johnson. Caputo will be questioned in regard to his technical expertise, and his participation in the "political hit squad" and related activities during the reign of former Sheriff McCarthy. Caputo will be questioned concerning his role in the burglary or surreptitious entry of Judge Harry Claiborne's home.

14. Steve Rybar, former FBI Special Agent, San Diego, California, will be called to testify regarding his purpose for and actions associated with his admitted entry into Judge Claiborne's home on Rancho Road under the pretext that he was a potential buyer. He will be questioned concerning his association and conversations with former FBI Special Agent-in-Charge Joseph Yablonsky regarding Judge Claiborne. Rybar will be questioned regarding his association and conversations with Metro Sgt. Dennis Caputo, with informants Cliff Isbell and James Johnson. Rybar will be questioned concerning his participation in a burglary or surreptitious entry into the home of Judge Harry E. Claiborne in the Spanish Oaks neighborhood in Las Vegas, Nevada.

15. Andy Gramby Hanley, a federally protected witness who with his father plead guilty to the execution-murder of

Culinary Union figure Al Bramlett, will be called. Hanley became a cooperating federal witness and informant and provided information and testimony resulting in arrests and convictions. Hanley was asked by the FBI to supply the floor plan of Judge Claiborne's home on Rancho Road while he was a federal witness and informant. Hanley has only recently volunteered the substance of this testimony through intermediaries.

16. Joseph Yablonsksy, San Francisco, California, a former FBI Special Agent-in-Charge assigned to Las Vegas, Nevada, will be called to testify regarding his vendetta with Judge Harry E. Claiborne, the negotiations leading to the purchase of perjured testimony from Joseph Conforte, his attempts to induce others to implicate Judge Claiborne in some or any form of wrongdoing, his conversations with FBI Director William Webster, and other Department of Justice employees regarding Judge Claiborne. Yablonsky will be examined concerning his abuse of authority while a Special Agent-in-Charge in Las Vegas and his persecution of former Metro Homicide Detective Chuck Lee (now a Clark County District Attorney's investigator), Private Detective Eddie LaRue, former Nevada IRS Director Gerald Swanson, and others.

Yablonsky may be impeached for his conversion of $40,000.00 from a local banking institution for which prosecution declined by the Attorney General of the United States and by the Director of the FBI because of its possible impact on the Claiborne prosecution. He may also be impeached for his violation of the Hatch Act, and subsequent lies in an attempt to cover up such Hatch Act violation on behalf of his favored candidate, Mahlon Brown, in an unsuccessful race for Attorney General of Nevada. Yablonsky may also be impeached for his attempt to coerce a local hotel into a gift of $197.00 meal for himself and three companions.

17. Eddie LaRue, private investigator, Las Vegas, Nevada, will testify regarding the pressures placed upon him by former FBI Special Agent-in-Charge Joseph Yablonsky to commit perjury and to falsely implicate Judge Claiborne in wrongdoing. LaRue was prosecuted by Department of Justice Public Integrity Section lawyers and acquitted on false charges advanced by Yablonsky that LaRue had been involved in an unlawful wiretap.

18. Charles "Chuck" Lawrence Lee, an investigator and polygraph operator, will testify regarding the attempts of the FBI, pursuant to former FBI Special Agent-in-Charge Joseph Yablonsky and his assistant Herb Hawkins, to coerce or persuade Lee to perjure himself and to falsely implicate Judge Harry Claiborne in a purported wiretap. Lee will testify about the injury to his job and reputation caused by Yablonsky as a result of Yablonsky's anger at Lee for refusing to collaborate in the fabrication of charges against Judge Claiborne. Lee will corroborate his testimony with documents he has obtained from the FBI pursuant to the Freedom of Information and Privacy Acts which detail some of the covert surveillances, and an abortive "sting" operation targeting himself and Judge Claiborne. Mr. Lee will testify concerning an apparent attempt to install an illegal and covert electronic surveillance device in his home on or about July 21, 1981, three days after law enforcement agents obtained the floor plan of his home from a real estate salesperson.

19. Geoff Anderson, Esq., San Francisco, California, former head of the Justice Department's Strike Force in Las Vegas, Nevada, will be called to testify regarding the basis of the feud between the Strike Force and the Federal Judges in Nevada, including Judge Harry Claiborne. Anderson will be interrogated about the abortive "sting" operation he approved which targeted Judge Claiborne and Charles Lee and the basis for his opinion that the contemplated "sting" would not have "insurmountable problems" due to "entrapment claims". Anderson will be interrogated regarding his contacts and conversations with former Special Agent-in-Charge Joseph Yablonsky and other FBI and Department of Justice employees in reference to their plans to get rid of Judge Harry E. Claiborne.

20. Gerald Swanson, former IRS District Director for the State of Nevada, will testify regarding the contacts and pressures placed upon him by former FBI Special Agent-in-Charge Joseph Yablonsky to clear the way for and make straight the path of Joseph Conforte. Swanson will testify regarding the concessions for Conforte demanded by Yablonsky and the tactics employed by Yablonsky when Swanson disagreed. Swanson was targeted and removed by Yablonsky's efforts to falsely implicate Swanson in a bribe plot involving Reno attorney Peter Perry and Alex Lembreres. Swanson will also testify as an expert witness concerning the appropriate and normal manner of handling questioned returns such as those of Judge Harry E. Claiborne. His testimony will establish that the IRS did not follow the appropriate procedure.

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21. Clyde Maxwell, Newport Beach, California, will testify as an expert witness that the IRS and the prosecutors did not follow the normal or the appropriate channels in prosecuting Judge Harry E. Claiborne.

22. Judge Walter E. Hoffman, Senior District Judge for the Eastern District of Virginia, will testify concerning his special appointment to hear this case by Chief Justice Warren Burger.

Judge Hoffman will testify as to his failure to examine critical exculpatory materials which would impeach the prosecution's key witness. The interrogation will query why Judge Hoffman, who has a well deserved reputation for being careful, thorough, and bright was uncharacteristically neglectful in this single instance.

Judge Hoffman will be interrogated for bias and prejudice against Judge Harry E. Claiborne.

23. Chief Justice Warren Burger will be called to testify concerning the criteria he employed in appointing the judges special designated to hear this and related cases. Chief Justice's testimony will establish that the Special Appeals panel was irregularly constituted. The Chief Justice will be asked to explain why he bypassed normal statutory procedures to appoint Appeals Court Judges from outside the Ninth Circuit.

The Chief Justice will be examined regarding his previously expressed bias and prejudice against the State of Nevada and, by necessary implication, its people and the affect that his bias and prejudice had upon his designation of judges. He will be questioned regarding contacts and conversations he may have had with FBI Director William Webster, former Attorney General William French Smith, and any of the Judges appointed to hear this case.

24. Senior Judges Wilbur F. Pell, Jr., Senior Circuit Judge for the Seventh Circuit, J. Edward Lumbard, Senior Circuit Judge for the Second Circuit and Robert H. McWilliams, Senior Circuit Judge for the Tenth Circuit will be questioned concerning the irregular manner in which they were designated to hear the appeal in this matter. They will be interrogated in regards to their refusal and failure to conduct an independent examination of the materials on which the trial court based its ruling, particularly by failing and refusing to examine or unseal the withheld documents. (Cf. dissenting opinion of Judge Ferguson, 781 F.2d at 1327). They will be cross-examined about whether they read the unsealed record or any portions thereof. If any of them read the unsealed record or exhibits, they will be asked why they overstated by more than $23,000.00 the amount of a tax refund Judge Claiborne claimed on his 1980 tax return. The testimony and cross-examination of these judges will demonstrate that Judge Claiborne never received an independent examination of the errors at his trial from the Judicial Branch.

25. IRS Agents Skelton and Halper of Las Vegas, Nevada, will be interrogated concerning their roles in the investigation of Judge Claiborne and the pressures they placed on witnesses including Jerry D. Watson, Charlotte Travaglia, and Joseph Wright.

26. Rick Jessinger, Special Agent, FBI, Las Vegas, Nevada, will be interrogated regarding his role in the

investigation of Judge Claiborne, Jessinger's contacts and conversations with former FBI Special Agent-in-Charge Yablonsky, and Jessinger's roles in the questioning of Charlotte Travaglia and Jerry D. Watson.

27. Walt Rozanski, Las Vegas, Nevada, will testify about the pressures placed on him to fabricate false charges against Judge Claiborne. The pressures emanated from former FBI Special Agent-in -Charge Yablonsky.

28. Paul Ashe, Miami, Florida, whose wife had worked for Yablonsky, offered to work undercover for Yablonsky in return for help in his wire fraud case, for which he was indicted in Nevada. Ashe told Yablonsky he was aware of several major drug deals pending in Southern California. Ashe will testify that Yablonsky was not interested in the drug cases but asked him to take $50,000.00 in cash and attempt to pay the money to Judge Claiborne. If Claiborne refused the money, Ashe was to drop the money and walk out of the office; Yablonsky would handle it from there. Ashe declined to participate in such an attempt.

29. Ronald Veatch, facing prosecution for interstate transportation of stolen jewelry, will testify he was visited in jail by former FBI Special Agent-in-Charge Joseph Yablonsky and promised he would walk if he would agree to testify falsely before a grand jury that he had paid $200,000.00 to Claiborne through a friend of the Judge. Veatch refused the invitation to perjury.

30. Richard Wright, Esq., former prosecutor and now a respected defense attorney, will testify that a client of his, Nevada State Senator Floyd Lamb who was indicted on the YOBO

sting, was approached through an intermediary. An FBI agent and the Department of Justice offered to have Lamb's charges dropped if he would provide incriminating evidence regarding Judge Claiborne. Lamb could offer no truthful incriminating evidence against the Judge. Wright will also testify as a character witness for Judge Claiborne and will testify that Judge Claiborne has done nothing which has betrayed the trust of the People of the United States or reduced the confidence in the integrity and impartiality of the judiciary and that Judge Claiborne has not brought disrepute on the Federal Courts and the Administration of Justice.

31. Joseph Conforte, Storey County, Nevada, will be called to testify under cross-examination concerning the negotiations leading to the purchase of his perjured testimony by IRS and FBI agents acting at the direction of former FBI Special Agent-in-Charge Yablonsky.

32. William Webster, Director of the FBI, Washington, D.C., will be called to testify regarding the trust which he mistakenly placed in former FBi Special Agent-in-Charge Yablonsky's opinions and statements in regard to Judge Claiborne. He will be examined regarding the suppression of criminal charges against former FBI Special Agent-in-Charge Joseph Yablonsky in order to avoid jeopardizing the Claiborne conviction.

33. William French Smith, former Attorney General of the United States of America, will be called to testify regarding the faith and trust mistakenly placed by the Department of Justice in former FBI Special Agent-in-Charge Yablonsky and concerning the suppression of criminal charges against Yablonsky

in order to avoid jeopardizing the Claiborne prosecution and conviction.

34. John McCarthy, former Sheriff of Clark County, Nevada (Las Vegas), will be called to testify about the relationship between his administration and former FBI Special Agent-in-Charge Yablonsky. His testimony establishes that Charles Lee was wrongfully demoted because of false statements from Yablonsky's immediate subordinate, Herb Hawkins, that Lee was to be indicted. This will, with other evidence, indicate the scope of the campaign of disinformation and dirty tricks directed toward Judge Claiborne and those who refused to collaborate in the fabrication of charges against him.

35. Bruce Lyons, Esq., Miami, Florida, will testify regarding former FBI Special Agent-in-Charge Yablonsky's expressed vendetta against Judge Claiborne.

36. Herb Hawkins, FBI, Phoenix, Arizona, will be called to testify regarding the vendetta in the FBI Las Vegas office directed toward Judge Claiborne and against those who, like Charles Lee, refused to collaborate in the fabrication of charges against Judge Claiborne.

37. Peter Perry, Esq., Reno, Nevada, will be called to testify regarding the negotiations leading to the purchase of perjured testimony from his client, Joseph Conforte.

38. Andrew Reich, of the Justice Departments Office of Professional Responsibility, will be called to testify about dropping charges against Eddie LaRue if LaRue would undermine Judge Claiborne.

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39. Michael E. Shaheen, Jr., Chief Investigator for the Office of Professional Responsibility, Washington, D.C., will be called to testify that he recommended that former FBI Special Agent-in-Charge Yablonsky be prosecuted and that such recommendation was overruled for political reasons by Senior Justice Officials for the reasons that it would jeopardize the Claiborne case and that they could not let "that little paper" [The Las Vegas Sun] "run one of our guys [Yablonsky] out of town".

40. Judge Bernard Decker will be called to testify that if any other judge but Judge Claiborne had made financial disclosures in the manner accomplished by Claiborne that he would not have been concerned. His testimony will demonstrate a bias or animus by a segment of the Judicial Branch.

41. Character witnesses to be called to establish that Judge Harry Claiborne has done nothing to betray the trust of the American People or to reduce the confidence in the integrity and impartiality of the judiciary include:

A. Edward R. J. Kane, Esq., Las Vegas, Nevada, former Chief Criminal Deputy of the United States Attorney's Office and a former State prosecutor. Kane will testify that Judge Claiborne was the best Judge he ever appeared before, state, federal, or local, and that if Claiborne had been acquitted on a Friday, he would have had no hesitation in going before him for the Government on the following Monday.

. . .

B. Ruth Cohen, Esq., Las Vegas, Nevada, presently an Assistant United States Attorney who has tried major cases before Judge Claiborne.

C. Lamond Mills, Esq., Las Vegas, Nevada, former United States Attorney appointed by President Ronald Reagan. Mills, a Republican, Vietnam Veteran, Mormon, and graduate of the University of Utah, will testify regarding the respect he developed for Judge Harry E. Claiborne while prosecuting cases in his court and will testify regarding the bad faith of Yablonsky and the Department of Justice in pursuing the Judge.

D. Lorraine Murphy, former Clerk of the Federal District Court for the District of Nevada.

E. Brad Jerbic, Esq., Deputy District Attorney and former law clerk to Judge Claiborne.

F. Ed Horn, Esq., former law clerk to Judge Claiborne.

G. Mike O'Callaghan, Esq., Deputy District Attorney, Clark County, Nevada.

H. Robert Dickerson, Esq., former Assistant United States Attorney.

I. Leland Lufty, Esq., former Assistant United States Attorney.

J. Daniel Markoff, Esq., Federal Public Defender, Las Vegas, Nevada.

K. Ken Cory, Esq., former Federal Public Defender, Las Vegas, Nevada.

L. Don Campbell, Esq., former Assistant United States Attorney and Attorney-in-Charge of the Organized Crime Drug Enforcement Task Force.

M. Gene Sadoian, former Chief Federal Probation and Parole Officer. Sadoian will also testify regarding the trust which Judge Claiborne placed in those to whom he delegated responsibility.

N. Helen Holly, Federal Probation and Parole Officer.

O. David Z. Chesnoff, Esq., Las Vegas, Nevada.

P. Steve Stein, Esq., former Assistant United States Attorney and respected attorney.

Q. Barry Lieberman, Esq., former Assistant United States Attorney.

IN THE SENATE OF THE UNITED STATES
SITTING AS A COURT OF IMPEACHMENT

Impeachment of Judge Harry E. Claiborne	)

APPLICATION FOR ISSUANCE OF SUBPOENAS

The Respondent, Harry E. Claiborne, by and through his counsel, Oscar B. Goodman, Esq. and the Honorable Howard W. Cannon, hereby makes application, pursuant to Rule XXV, Rules of Procedure and Practice in the Senate when sitting on Impeachment Trials, for the issuance of the following subpoenas:

1. **Joseph Wright**, 333 North Rancho Drive, Las Vegas, Nevada 89106;

2. **Judy Ahlstrom**, 2803 Iris Court, Henderson, Nevada 89015 or Federal Building, 300 Las Vegas Blvd. South, Room 341, Las Vegas, Nevada 89101;

3. **Annette Quintana**, 520 South Fourth Street, Las Vegas, Nevada 89101;

4. **Kenneth Swanson**, c/o Joseph Wright, 333 North Rancho Drive, Las Vegas, Nevada 89106;

5. **Gennie McIlvaine**, 1020 East Desert Inn Road, Suite 1101, Las Vegas, Nevada 89109;

6. **Jerry Watson**, 1700 E. Desert Inn Road, Las Vegas, Nevada 89109;

7. **Charlotte Travaglia**, 3414 Sylvia #4, Las Vegas,

Nevada 89121;

8. **Nouko Low**, P.O. Box 755, Las Vegas, Nevada 89125;

9. **Lake Headley**, 300 S. Fourth St., Suite 600, Las Vegas, Nevada 89101;

10. **Cliff Isbell**, c/o Lake Headley, 300 S. Fourth St., Suite 600, Las Vegas, Nevada 89101;

11. **James Johnson**, c/o Lake Headley, 300 S. Fourth St., Suite 600, Las Vegas, Nevada 89101;

12. **Dennis Caputo**, c/o LVMPD, 430 E. Stewart Avenue, Las Vegas, Nevada 89101;

13. **Steven Rybar**, 11165 Forestview Lane, San Diego, California 92131;

14. **Andy Gramby Hanley**, c/o F.C.I. Sandstone, Sandstone, Minnesota 55072;

15. **Joseph Yablonsky**, Address Unknown;

16. **Eddie LaRue**, 1105 South 8th Street, Las Vegas, Nevada 89104;

17. **Chuck Lee**, c/o Clark County District Attorney's Office, 200 South Third Street, 7th Floor, Las Vegas, Nevada 89155;

18. **Gerald Swanson**, c/o Internal Revenue Service, Dallas, Texas;

19. **Walter Rozanski**, 10416 Connechusett, Tampa, Florida 33617;

20. **Lawrence Semenza**, 560 E. Plumb Lane, Reno, Nevada 89510;

21. **Richard Jessinger**, c/o F.B.I., 300 Las Vegas Blvd. South, Las Vegas, Nevad 89101;

22. **Donald Skelton**, c/o I.R.S., 300 Las Vegas Blvd. South, Las Vegas, Nevada 89101;

23. **Leo Halper**, c/o I.R.S., 300 Las Vegas Blvd. South, Las Vegas, Nevada 89101;

24. **Peter Perry**, P.O. Box 21510, Reno, Nevada 89515;

25. **Richard Wright**, 302 E. Carson #620, Las Vegas, Nevada 89101;

26. **Paul Ashe**, P.O. Box 1986, Ocala, Florida 32678;

27. **Ron Veatch**, Address Unknown;

28. **Joseph Conforte**, c/o Mustang Ranch, Storey County, Nevada;

29. **Bruce Lyons**, 600 N.E. 3rd Ave., Ft. Lauderdale, Florida 33304;

30. **Honorable Walter Hoffman**, U.S. District Courthouse, Norfolk, Virginia 23510;

31. **Honorable Warren Burger**, c/o United States Supreme Court, Washington, D.C.;

32. **Honorable John L. Smith, Jr.**, United States District Court, Washington, D.C.;

33. **H. M. Greenspun**, 121 S. Highland Drive, Las Vegas, Nevada 89106;

34. **Honorable E. M. Gunderson**, Nevada Supreme Court, Supreme Court Building, Capitol Complex, Carson City, Nevada 89710;

35. **Ed Kane**, 300 South Fourth St., Suite 600, Las Vegas, Nevada 89101;

36. **Ruth Cohen**, 300 Las Vegas Blvd. South #431, Las Vegas, Nevada 89101;

37. **Lamond Mills**, 825 Clark Avenue, Las Vegas, Nevada 89101;

38. **Lorraine Luke**, c/o Sahara Hotel, Security Podium, 2535 Las Vegas Blvd. South, Las Vegas, Nevada 89109;

39. **Brad Jerbic**, 200 South Third St., 7th Floor, Las Vegas, Nevada 89155;

40. **Ed Horn**, 95 Court Street, Reno, Nevada 89501;

41. **Mike O'Callahan**, 200 S. Third St., 7th Floor, Las Vegas, Nevada 89155;

42. **Peter Echeverria**, 555 South Center St., Reno, Nevada 89501;

43. **David Chesnoff**, 3885 South Decatur Blvd. #2000, Las Vegas, Nevada 89103;

44. **Robert Dickerson**, 333 S. Third St. #1130, Las Vegas, Nevada 89101;

45. **Donald Campbell**, 300 S. Fourth St. #1009, Las Vegas, Nevada 89101;

46. **Gene Sadoian**, 7900 Martingale Lane, Las Vegas, Nevada 89119;

47. **Helen Holley**, 300 S. Fourth St., Las Vegas, Nevada 89155;

48. **Leland Lutfy**, 233 South Fourth St., Las Vegas, Nevada 89101;

49. **Daniel Markoff**, 330 S. Third St. #1050, Las Vegas, Nevada 89101;

50. **Honorable William Webster**, J. Edgar Hoover Building, Washington, D.C.;

51. **Clyde Maxwell**, 567 San Nicolas Drive, Suite 208,

Newport Beach, California 92660;

52. **Mahlon Brown, III**, 550 E. Charleston Blvd. #B, Las Vegas, Nevada 89104;

53. **Mills Lane**, Washoe County Courthouse, Reno, Nevada;

54. **Honorable Bernard Decker**, Federal Courthouse, Chicago, Illinois;

55. **Geoffrey Anderson**, Federal Building, San Francisco, California;

56. **Honorable Wilbur F. Pell**, United States Court of Appeals For the 7th Circuit, Chicago, Illinois;

57. **Honorable J. Edward Lumbard**, United States Court of Appeals for the 2nd Circuit, New York City, New York;

58. **Honorable Robert H. McWilliams**, United States Court of Appeals for the 10th Circuit, Denver, Colorado;

59. **Honorable William French Smith**, c/o Dunn & Crutcher, Los Angeles, California;

60. **John McCarthy**, Las Vegas, Nevada;

61. **Herbert Hawkins**, Federal Building, Phoenix, Arizona;

62. **Andrew Reich**, U.S. Department of Justice, Washington, D.C.; and

63. **Michael E. Shaheen, Jr.**, Office of Professional Responsibility, United States Department of Justice, Washington, D.C.

Respectfully Submitted:

HARRY E. CLAIBORNE

By ________________________
Oscar B. Goodman, Esq.
Honorable Howard W. Cannon
Attorneys for Respondent

II.D

IN THE SENATE OF THE UNITED STATES

SITTING AS A COURT OF IMPEACHMENT

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Impeachment of Judge)
Harry E. Claiborne)

MOTION TO DECLARE "RULE XI, RULES OF PROCEDURE AND PRACTICE IN THE SENATE WHEN SITTING ON IMPEACHMENT TRIALS" AS UNCONSTITUTIONAL

The Respondent, Judge Harry E. Claiborne, through his counsel, Oscar B. Goodman, Esq. and the Honorable Howard W. Cannon, respectfully moves the Senate to Declare "Rule XI, Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials" as unconstitutional. The grounds in support of this Motion are set forth in the Memorandum attached hereto and incorporated herein by reference.

Respectfully Submitted:

HARRY E. CLAIBORNE

By____________________
Oscar B. Goodman, Esq. and
Honorable Howard W. Cannon

Attorney for Respondent

MEMORANDUM IN SUPPORT OF

MOTION TO DECLARE "RULE XI, RULES OF PROCEDURE AND PRACTICE IN THE SENATE WHEN SITTING ON IMPEACHMENT TRIALS" AS UNCONSTITUTIONAL

Article I, Section 3, of the United States Constitution provides:

> "The Senate shall have the sole Power to try all Impeachments . . . and no person shall be convicted without the concurrence of two thirds of the members present."

There is no provision in the Constitution which suggests, even inferentially, a delegation of such responsibility.

> "The Senate determines the questions of fact -- did the respondent do the things charged; and of law -- do they constitute impeachable offenses?" **Radigan,** "Impeachment" (1957), updated **Trinken** (1974).

For the first time in history, a twelve member committee -- and not the full Senate -- contemplates receiving the evidence and hearing testimony in an impeachment trial. Even though the Rule has been in effect since 1935 (May 28, 1935, 74-1, Journal p. 391, Record p. 8309) it has not been utilized, notwithstanding the fact the impeachment trial of Judge Halsted Ritter was conducted after the Rule's adoption. The more serious the case in terms of personal effect on the rights of the parties, the greater the need is to adhere to the principle that the one who decides must hear. "Impeachment", **Committee on Rules and Administration, United States Senate** (Aug. 7, 1974).

It is axiomatic that a Senator, as the trier of fact, as well as law, must be familiar with the evidence in order to vote. In the instant proceeding, where testimony will be conflicting, where the demeanor of the witnesses will be reflective of their credibility, it is clear that a trial by Committee was not the founding fathers' concept of a trial by the Senate. **Federalist 65.**

The Constitutional debates lend credence to the posture that the trial function is not delegable, since great care was taken as to what "tribunal" was appropriate to hear the evidence and make the final decision. "The Records of the Federal Convention 21" (**M. Farrand** ed. 1911 Vol.II, pp. 551-553), as cited in "Constitutional Grounds for Presidential Impeachment," **Report by the Staff of the Impeachment Inquiry** (2/74).

The rationale for even suggesting delegability of function is based on the concept that the wheels of a great Nation such as ours should not grind to a halt while the trial takes place. Impeachment, however, is a proceeding designed not only to bring allegations against certain constitutionally designated officials to account, but also to provide the common man with evidence of the integrity and fairness of his government. It is (wrote **John Jay**) "a national inquest into the conduct of public men." To deprive Harry E. Claiborne of a **full trial** before the Senate would subvert the purpose of the impeachment clauses in the Constitution.

The framers of the Constitution expected nothing less.

The express provision of impeachment in the Constitution bars all alternatives.

Respectfully Submitted:

HARRY E. CLAIBORNE

By____________________
Oscar B. Goodman, Esq. and
Honorable Howard W. Cannon

Attorneys for Respondent

II.E

IN THE SENATE OF THE UNITED STATES

SITTING AS A COURT OF IMPEACHMENT

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Impeachment of Judge)
Harry E. Claiborne)

MOTION TO DISMISS THE ARTICLES OF IMPEACHMENT ON THE GROUNDS THEY DO NOT STATE IMPEACHABLE OFFENSES

The Respondent, Judge Harry E. Claiborne, by and through his counsel, Oscar B. Goodman, Esq. and the Honorable Howard W. Cannon, respectfully moves the Senate to Dismiss the Articles of Impeachment on the grounds they do not state impeachable offenses. This Motion is based on the Memorandum attached hereto and incorporated herein by reference.

Respectfully Submitted:

HARRY E. CLAIBORNE

By ______________________
Oscar B. Goodman, Esq. and
Honorable Howard W. Cannon

Attorneys for Respondent

MEMORANDUM IN SUPPORT OF

MOTION TO DISMISS THE ARTICLES OF IMPEACHMENT ON THE GROUNDS THEY DO NOT STATE IMPEACHABLE OFFENSES

The first three articles of impeachment returned against Respondent are couched in language that "Harry E. Claiborne, having been nominated by the President of the United States, confirmed by the Senate of the United States, and while serving as a judge of the United States District Court for the District of Nevada, was and is guilty of misbehavior and of high crimes and misdemeanors in office. . . ." (Article IV charges that Judge Claiborne was and is guilty of "misbehavior and of misdemeanors in office . . .).

The authors of the Articles were less than artful in their draftsmenship since the Articles constitute a hybrid allegation rather than being founded on a constitutional basis.

Article II, Section 4, of the Constitution provides that:

> "The President, Vice President and all Civil Officers of the United States, shall be removed from Office on Impeachmemt for, and conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."

Article III of the Constitution provides that:

> "Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour. . . ."

It is submitted that based on the aforesaid provisions which delineate the exclusive grounds of impeachment set forth in the Constitution, the four articles charged against Judge Claiborne are infirm since:

1. None of the Articles of Impeachment relate the alleged impeachable activity to "behavior" involving Judge Claiborne's discharge of office.

2. Article II, Section 4, of the Constitution, is inapplicable to federal judges.

3. The Articles of Impeachment are multiplicitous and duplicitous and are therefore infirm.

4. Assuming **arguendo** that the Constitution contemplates a finding that Respondent's office is subject to the provisions of Article II, Section 4, Judge Claiborne's conduct is not of such a nature as to be impeachable.

1. "Impeachment", at the time of the adoption of the Constitution, was an established and well-understood procedure in English and American parliamentary law. It was designed to reach those in high places guilty of official delinquencies or maladministration.

Judge Claiborne has been charged in the Articles of Impeachment with activity not related to grave official wrongs. Rather, the charges are based on alleged private misconduct, as distinguished from official misconduct, (**Ferguson v. Maddox**, 263 S.W. 888 (Tex., 1924), **J. Bryce**, "The American Commonwealth" 47, 208 (1889)), and as such are not impeachable.

Offenses not immediately connected with office, such as murder, burglary, and robbery, are left to the ordinary course of judicial proceedings, while impeachment was historically limited to misconduct in office.

As Lord Coke opined, "Good behavior must be intended in matters concerning [the] office." 4 Coke, "Institutes" 117.

2. The standard for impeachment of a judge is different than that for other officers. Only judges "hold their offices, during good behavior"; no other officer has such tenure. (See Article III, Constitution). The president and vice president are elected for a term; civil officers are appointed for indeterminate terms. The president, vice president and civil officers shall be removed from office for a conviction of treason, bribery, or other high crimes or misdemeanors. (See Article II, Section 4, Constitution.)

The Founding Fathers who framed the Constitution clearly distinguished the basis upon which the respective branch of government office holders could be impeached, limiting removal of the judiciary to acts involving misconduct related to discharge of office.

This was done to ensure the separation of powers among the three branches of government. To ensure the integrity of the judiciary, the Constitution provided that federal judges be appointed for life. Once confirmed by the Senate, a judge need not fear losing his office solely because he incurred the wrath of the executive or legislative branches. The Framers knew such freedom was necessary if the judiciary was to be able to protect the rights of the people from abuses by the other two branches. Recognizing that the judiciary wields merely judgment, and does not hold the sword or prescribe the rules, the Framers limited the power of removal of a judge to acts of official misconduct. If a judge violated a law unrelated to his judicial function, sanctions distinct from removal by impeachment were contemplated and available. **United States v. Claiborne,** 765 F.2d 784 (9th Cir., 1986).

Specific provision has been made relating to the judiciary (Article III, Constitution) as distinct from provisions relating to "civil officers". It is submitted that because of the lifetime tenure of judges, as contrasted to the indefinite tenure of civil officers, the criteria contemplated by the Framers was particularized for the judiciary and not other officers. It is axiomatic that a specific provision will not be controlled or nullified by a general one. **T. The Sedgwick, Interpretation and Construction of Statutory and Constitutional Law 98** (2d ed. 1874).

3. Judge Harry Claiborne objects to the four articles of impeachment approved by the House of Representatives on July 22, 1986, on the grounds that they are both multiplicitous and duplicitous.

Duplicity is the joining in a single charge of two or more distinct and separate offenses.

Multiplicity is the charging of a single offense in several different counts.

A reading of the four Articles of Impeachment clearly shows that Article 3 is multiplicitous with Articles 1 and 2. Article 3 simply reiterates the charges contained in Articles 1 and 2, adding thereto the fact that Judge Claiborne was found guilty of the charges enumerated in the first two articles.

Article 4 is not only multiplicitous with Articles 1, 2 and 3, but is duplicitous within itself. Article 4 charges Judge Claiborne with the same misdeeds as contained in the first three articles, and includes all of the charges in one article.

As is obvious from a review of the four Articles of Impeachment, the predicate for all four of the articles contained therein, is the same conduct alleged to Judge Claiborne dealing with the same items.

4. Taking the allegations in the Articles of Impeachment in a light most favorable to the Managers, it is clear that the allegations are not of such quality and character to form the basis of an impeachment proceeding. Acts which result from error of judgment or omission of duty, without the presence of fraud, or from the misconception of duty, without the presence of a willful disregard, are not impeachable.

Historically the acts resulting in sanctions being imposed in impeachment trials are in their entirety related to the judicial function, as related to the oath a judge takes upon entering office. 28 U.S.C. 453.

To date, the judicial impeachments have involved an assessment of the conduct of the judges in terms of the duties of their office:

> **John Pickering** (1803) - Misconduct in a trial and being on the bench while intoxicated.
>
> **James Peck** (1830) - Misconduct in office by misuse of contempt power.

Charles Swayne (1903) - Padding expense accounts; using railroad property in receivership for his personal benefit; misusing contempt powers.

Robert W. Archbald (1912) - Misconduct including personal profits; improper appointment of jury commissioner.

Harold Louderback (1932) - Appointing incompetent receivers and allowing them excessive fees.

Halsted L. Ritter (1936) - Participating in champertous proceedings brought before him for a cash consideration; practicing law while serving as a federal judge; preparing and filing false income tax returns.

The conduct has fallen into three broad categories: (1) exceeding the constitutional bounds of the powers of the office in derogation of the powers of another branch of government; (2) behaving in a manner grossly incompatible with the proper function and purpose of the office; and (3) employing the power of the office for an improper purpose or for personal gain. "Constitutional Grounds for Presidential Impeachment", **Report by the Staff of Impeachment Inquiry (2/74).**

Judge Claiborne's alleged conduct is not encompassed within these precedents.

In addition, it should be noted, that conduct of this nature, alleged in the Articles of Impeachment, in the District of Nevada, has been treated as not being that of moral turpitude. **In re Cochrane,** 549 P.2d 238 (Nev., 1976).

Respectfully Submitted:

HARRY E. CLAIBORNE

By Oscar B. Goodman

Oscar B. Goodman, Esq. and
Honorable Howard W. Cannon

Attorneys for Respondent

IN THE SENATE OF THE UNITED STATES

SITTING AS A COURT OF IMPEACHMENT

Impeachment of Judge)
Harry E. Claiborne)

MOTION FOR FULL AND FAIR IMPEACHMENT TRIAL BEFORE THE ENTIRE SENATE OF THE UNITED STATES, OR IN THE ALTERNATIVE FOR DISMISSAL; AND REPLY TO HOUSE OF REPRESENTATIVE MOTIONS #1 AND #2 ON FILE HEREIN

The Respondent, Judge Harry E. Claiborne, by and through his counsel, Oscar B. Goodman, Esq. and the Honorable Howard W. Cannon, [*] by this pleading respectfully moves for a full and fair impeachment trial before the entire Senate of the United States, or in the alternative for dismissal of the Articles of Impeachment; and replies hereby to House of Representative Motions #1 and #2 on file herein. As authority therefor, Judge Claiborne relies upon the Memorandum attached hereto and incorporated herein by reference.

Respondent, Harry E. Claiborne, alleges as follows:

1. That after an arduous and calculated four (4) year campaign by the Executive (United States Justice Department) Respondent was indicted in a seven (7) count federal indictment.

2. That the indictment was only procured after the Executive had presented its tainted evidence to four (4) grand juries, in Las Vegas, Nevada, Portland, Oregon, and Reno, Nevada.

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[*] This pleading was prepared with the assistance of David Chesnoff, Esq. and Michael V. Stuhff, Esq.

3. That inducements and promises were made and given to a miscreant who acted as an informant that shocked the conscience of the Country and our entire constitutional system.

4. That but for the Respondent Harry E. Claiborne's reputation as an ardent defender of civil liberties, both before and after his ascension to the bench, which caused discomfiture to members of the Executive Branch of government (most notably the Special Organized Crime Task Force and Las Vegas FBI Special Agent in Charge Joseph Yablonsky) his prosecution would never have occurred.

5. That a constitutional crisis was created, when in its investigation of Judge Claiborne, the Executive portrayed him as being corrupt, by violating the Judge's due process protections.

6. That this constitutional crisis was exacerbated when the Judicial Branch, by and through the Chief Justice of the Supreme Court, hand-picked those members of the Judiciary who would oversee the prosecution and review of the Judge's case.

7. That the Judiciary, whether intimidated by that which they saw happening to Judge Claiborne, or as a consequence of their concern for the reputation of the Judiciary, or in their belief in the sincerity of the Executive, or a combination of the same, never fully permitted Judge Claiborne to confront and address the issue of his special targeting by the Executive.

8. That favorable evidence was withheld from him; and he was not permitted to present the entire scenario of events to the jury of citizens assigned the task of judging him, which

would have permitted him to place the concept of the prosecution within a defensible perspective.

9. That even in spite of the calculated inhibition of his defense, four (4) counts of alleged serious judicial misbehavior involving bribery were dismissed by the Government on its own motion; and Judge Claiborne was acquitted of one (1) other count of making false statements on his judicial ethics form at trial.

10. That the aforesaid dismissal and acquittal occurred after a mistrial was declared since the jury could not reach a verdict that Judge Claiborne was guilty of **any** offense.

11. That contrary to the House of Representatives' assertions that the judgment of the jury was unequivocally reached after Judge Claiborne received a full and fair hearing and that he has not claimed differently, it is respectfully submitted Judge Claiborne did not receive a fair trial and he has always maintained that posture.

12. That the House of Representatives improperly requests that this august body expeditiously "rush to judgment" by relying on the judicial principle of collateral estoppel, a concept created for reasons of **judicial** economy which are misplaced **instanter.**

13. That principles of collateral estoppel never contemplate that the questions concerning due process of law and the fairness of a previous proceeding are forever barred from a full and fair, open presentation at a subsequent proceeding involving a litigant. **Otherson v. Dept. of Justice, Immigration and Naturalization Service,** 711 F.2d 267, 272 (D.C.Cir., 1983).

14. That, **most significantly,** the impeachment proceedings before the Honorable United States Senate are a **separate** and **distinct** proceeding from any judicial proceeding and are sanctified by the solemnity of constitutional creation.

15. That the Honorable Harry E. Claiborne has proclaimed his innocence of all charges from the inception of the Executive's efforts against him. He has filed a barrage of legal pleadings: pretrial, during trial, after trial, appeal, post appeal and now to this Honorable Body. Despite the argument by the House that the case of Judge Claiborne should be afforded the guarantees assured by the constitutional process of full impeachment trial as envisioned by the Framers of our Constitution, Harry E. Claiborne continues to press on.

16. That he does not resign but instead demands the imperative of full Senate trial bespeaks the illogic of the House's position. This impeachment is not a foregone conclusion. It is a necessary and integral part of our scheme of Government.

17. That surely the constitutional crisis created by the Executive targeting a Judicial Branch member is one of national importance.

18. That significantly our criminal justice system specifically provided that Judge Claiborne be judicially tried and if convicted, sentenced. He was, and is presently incarcerated.

19. That the House assuredly would argue that the Judicial proceeding does not bar his impeachment trial by reason of double jeopardy. Nor did the Executive agree that the Judge had to be impeached before undergoing a judicial proceeding. As

a result, the Senate trial should also be treated as a distinct and autonomous proceeding with all the inherent guarantees of a full trial before the entire Senate.

20. That the constitutional repercussions on the sanctity of the separation of powers doctrine would be irreparably eroded if the position of the Judicial and Executive Branch were substituted for the reasoned judgment of the United States Senate. Historically, the impeachment process has been insulated from the power of the Executive and Judicial authorities by Constitutional edict.

21. That it would do immeasurable harm to the integrity of our three (3) branch system of government, particularly on the two hundredth (200) anniversary of the Constitution, that for the sake of expediency the full Senate of the United States permits its judgment to be less than independent.

22. That the House of Representatives, in its motions, acknowledges that the choice lies with the Senate in how to proceed and that the choice will likely be precedent for the process for hundreds of years to come.

23. That the Honorable Harry E. Claiborne abhors the Executive's attempted intimidation of the Judiciary and the utilization of unconstitutional procedures violative of due process law to judicially convict him. Were he not maintaining his innocence so vehemently there would probably have been a resignation from office by him. Where, however, he represents a branch of government as an Article Three Judge, maintaining his innocence and his qualification to remain on the bench, it is respectfully submitted that the Senate of the United States,

pursuant to its solemn oath to uphold the Constitution, must hold a full and fair trial before the entire United States Senate. That has always been the practice of this Body since our founding days. Such is particularly appropriate and mandated where the allegations about the Executive are so egregious as in the instant matter. To do otherwise would forever damage our constitutional scheme and irreparably harm our nation. **It is that important a choice.**

WHEREFORE, the premises considered, Harry E. Claiborne prays that this Honorable Senate grant a full trial before the entire United States Senate; that the twelve (12) member review process be dissolved; that the House of Representatives' Motions for Summary Disposition of the Third Article of Impeachment and to Apply Collateral Estoppel to Specific Issues Alleged in the First Two Articles of Impeachment be and the same denied; and for other relief of law and equity this Body deems just and fair.

Respectfully Submitted:

HARRY E. CLAIBORNE

By ______________________
Oscar B. Goodman, Esq. and
Honorable Howard W. Cannon

Attorneys for Respondent

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF

MOTION FOR FULL AND FAIR IMPEACHMENT TRIAL BEFORE THE ENTIRE SENATE OF THE UNITED STATES, OR IN THE ALTERNATIVE FOR DISMISSAL; AND REPLY TO HOUSE OF REPRESENTATIVE MOTIONS #1 AND #2 ON FILE HEREIN

THE ROLE OF THE SENATE

INTRODUCTION

> . . .so there are particular moments in public affairs when the people, stimulated by some irregular passion . . . or misled by the artful misrepresentations of interested men, may call for measures which they themselves will afterwards be the most ready to lament and condemn. In these critical moments, how salutary will be the interference of some temperate and respectable body of citizens, in order to check the misguided career and to suspend the blow meditated by the people against themselves, until reason, justice and truth can regain their authority over the public mind? What bitter anguish would not the people of Athens have often escaped if their government had contained so provident a safeguard against the tyranny of their own passions? Popular liberty might then have

> escaped the idelible reproach of decreeing to the same citizens the hemlock on one day and statues on the next.
>
> **The Federalist, No. 63.**

The Federalist Papers, which historian Clinton Rossiter described with little exaggeration as standing third only to the Declaration of Independence and the Constitution itself among all the sacred writings of American political history. (**The Federalist, Mentor,** 1961 at p. vii), so justified the need for a Senate to a well-ordered and long-lived Republic.

The Framers of the Constitution wisely provided in Article One, Section Three, of that document, that "The Senate shall have the sole Power to try all Impeachments."

Now "interested men" urge the Senate to abdicate its unique constitutional position as the sole fact finder and judge in an impeachment proceeding.

The Honorable Charles E. Wiggins, a Circuit Judge of the Ninth Circuit Court of Appeals was invited to so testify before the House Committee on the Judiciary, Subcommittee on Courts, Civil Liberties and the Administration of Justice. The House Report summarized Judge Wiggins' testimony to the effect that:

> . . . it is unnecessary for the subcommittee to engage in an independent finding of the facts, the facts having already been found under a judicial procedure which afforded [Judge Claiborne] full due process rights. The facts in his opinion, were found beyond a

reasonable doubt by a jury of twelve citizens without dissent. **(Report 99-688, Impeachment of Judge Harry E. Claiborne**, at p. 5).

The House Report which advocates adopting this "opinion" of its former member neglects to mention that Judge Wiggins' "opinion" carries only the weight of his title and is devoid of any of the familiarity with the facts or study of the law which we are entitled to expect before a judge offers an opinion.

Judge Wiggins testified that he had "no direct knowledge of the acts or omissions that resulted in the indictment and subsequent conviction [of Judge Claiborne]." He conceded that the issues on appeal gave him "no special insight with respect to the underlying facts of the Claiborne case." **(Testimony before the Subcommittee on Courts, Civil Liberties and the Administration of Justice.** June 19, 1986, at p. 65-6). In the face of such conceded unfamiliarity with the particulars of a specific case, we should expect a judicial officer to withhold opinion and judgment.

In Answer and Response to the suggestion of Judge Wiggins adopted and advocated by the House Subcommittee, the House Committee on the Judiciary and the Managers prosecuting this action, Judge Harry E. Claiborne respectfully submits and suggests that the Senate be guided by the protection considered necessary by the Founders of our Republic.

The concepts of "summary judgment" and "collateral estoppel" and "full faith and credit" are purely judicial concepts. Not only do they have nothing to do with this matter, those concepts are diametrically opposed to the concepts of separation of powers and checks and balances among the three co-equal branches of government.

In **Marbury v. Madison,** 5 U.S. 137, 1 Cranch 137, 2 L.Ed. 60 (1803), the Judicial Branch, through the opinion of Chief Justice Marshal, refused to extend some form of "full faith and credit" to actions of individual members of the Legislative and Executive Branch.

The principle of judicial review, so necessary to our Constitutional system of checks and balances in which all three branches of government are co-equal, would be impossible if the Judicial Branch were required to give "full faith and credit" or "collateral estoppel" effect to the Legislative Branch.

There are very few checks on the Judiciary and Executive power. The Federalist Papers make it clear that the sole power of impeachment is one of those necessary Constitutional checks.

Our system of constitutional government is based upon the remarkable concept of separation of powers, which has its roots in Western European struggles between legislative bodies and monarchs. **See, W. B. Gwyn, The Meaning of the Separation of Powers** (Tulane Univ., 1965).

English precedent formed the basis of the Framers of the Constitution's position as it related to impeachment.[1] Power consistently was passing between the King and the Parliament from the time of the English Civil War. These historical developments led to the formulation for the proper delineation of powers. **J. Locke, Second Treastise of Government** [An Essay Concerning the True Origin, Extent and End of Civil Government].

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[1] The entire scheme of impeachment is modeled on the English system which as first used by the 14th Century British Parliament to curb the powers of the King by holding his advisors accountable for wrongdoing. **Rauol Berger, Impeachment: The Constitutional Problems** (Harvard University Press, Cambridge, Mass., 1973)

It was Montesquieu, however, whose writings were well accepted throughout Western Europe and the American Colonies in the Eighteenth Century capturing the spirit of the rationale upon which the Constitutional Framers relied.

Montesquieu astutely observed that **any combination** of judicial, legislative or executive powers would create a system whose path would lead to inescapable tyranny and absolutism. **Montesquieu, The Spirit of the Laws,** 151-2 (Nugent Trans. 1949).

As a result the Honorable Harry E. Claiborne respectfully submits that the proposal by the House of Representatives would create the same combination of powers so antithetical to the system envisioned by Locke, Mortesquieu and the Framers.

Since the days of the American Revolution the concept and sanctity of the separation of powers has been embedded in our system of government.

The United States Constitution was drafted in a manner paralleling the suggestions of Montesquieu. The Framers sought to establish a system of checks and balances between the branches of government to ensure the **political** independence of each branch and to prevent the cancerous growth of exhorbitant power in any one branch of government.

This concept of checks and balances is relied upon by Judge Claiborne. The significance of the Senate permitting a full trial before the full Senate cannot be understated. It will ensure the functioning of our constitutional system and must not give way to preconceptions or expediency.

The Constitution charges the United States Senate with the duty to conduct impeachment trials of federal district court judges who are charged with misbehavior in office.

Benjamin Franklin, in reflecting upon the significance and moral imperative of impeachments wrote:

> What was the practice before this in cases where the chief magistrate rendered himself obnoxious? What recourse was had to **assassination** in which he was not only deprived of his life but of the opportunity of vindicating his character? It would be the best way, therefore, to provide in the Constitution for the regular punishment of the executive when his misconduct should deserve it, and **for his honorable acquittal when he should be unjustly accused. Benjamin Franklin,** 1787 (emphasis added).

The House proposal would have Judge Claiborne convicted without benefit of procedural Constitutional due process and without an opportunity to vindicate his character. Judge Claiborne has claimed he has been improperly maligned and that his judicial function has been disrupted. These allegations are too serious to be ignored for expediency's sake.

Significantly the Executive and the Courts did not bar his judicial trial because he had not already been impeached. Why then, extending that logic, should the legislative impeachment trial not be accorded the same solemn autonony as the judicial trial? They are independent of each other. A trial on the merits is dictated in order to insure that the power of the Executive does not become so wholly concentrated as to subvert the function of an independent federal Judiciary.

If the House of Representatives believes that the Judicial proceedings against Judge Claiborne are all that are contemplated by our system of government, then it is submitted that the Judge is serving his punishment and these proceedings should be dismissed. If not, then permit him the opportunity to declare before the Senate his case. Contrary to the inaccurate representations of the House of Representatives, the Judge has always argued that he has been denied due process, and as such been subjected to encroachment upon his sworn function as a judicial officer as a result of criticizing Constitutional misconduct by the Executive who prosecuted cases in his Court.

Furthermore, if the House of Representatives seeks to read impeachment in terms of the previous criminal prosecution they invite **the bar of double jeopardy. Richmond Screw Anchor Co. v. U. S.**, 275 U.S. 331 (1928); **U. S. v. Jim Fuey Moy**, 241 U.S. 349, 401 (1916).

Historically, the integrity of the Judiciary was protected by the Constitution by the appointment for life of Federal judges. The politically astute Framers, all of whom swelled within with the cause of liberty and protection of people's rights, recognized that this life term was necessary to insure a judiciary that would be independent, a judiciary which would and could assure the rights of the citizen from abuses by the Executive and Legislative Branches, without fear of reprisal.

In support of the concept of separation of powers as it related to impeachment, Alexander Hamilton wrote:

> Would there not be the greatest reason to apprehend that error in the first sentence would be the parent of error in the second sentence? That the strong bias of one decision would be apt to overrule the influence of any new lights which might be brought to vary the complexion of another decision?
>
> By making the same persons judges in both cases, those who might happen to be the objects of prosecution would, in a great measure, be deprived of the double security intended them by a double trial.
>
> Juries are frequently influenced by the opinions of judges. They are sometimes induced to find special verdicts, which refer the main question to the decision of the court. Who would be willing to stake his life and his estate upon the verdict of a jury acting under the auspices of judges who had

> predetermined his guilt. [**Hamilton, Federalist Papers**]

James Madison astutely **forewarned:** "Were the power of judging joined to the executive power, the judge might behave with all the violence of the oppressor."

This Honorable Senate should be insulted by the House of Representatives' suggestion that the Senate's constitutionally mandated independent judgment be supplanted by the judgment of twelve lay citizens; twelve jurors who were deprived of hearing claims of executive overreaching as being the reason for Judge Claiborne being tried.

The issues must be tried before the Senate to confirm again the separation of powers doctrine:

> The judiciary is beyond comparison the weakest of the three departments of power, and all possible care is requisite to enable it to defend itself against attacks. **The general liberty of the people can never be endangered so long as the judiciary remains truly distinct from both the legislative and the executive** . . . [but] the judiciary is in continual jeopardy of being overpowered, awed, or influenced by its coordinated branches. [**Hamilton, Federalist Papers**] (emphasis supplied).

In effect the Senate would be sanctioning the procedures chosen by the Executive, which resulted in indictment, conviction and incarceration of Judge Claiborne, should the Senate adopt the House of Representatives' proposal.

It should also be remembered that the division of functions which assigned the role of prosecutor to the Commons while the Lords sat in judgment was the "model" of the parallel division of impeachment functions between the House of Representatives and the Senate. **Federalist Paper No. 65** at 425.

The House of Representatives wants, as **prosecutor**, to convict Judge Claiborne. Unfortunately they seek their conviction by attempts to usurp Senatorial power and in derogation of the Constitution of the United States, in the name of expediency. The House of Representatives would ask the Senate of the United States to ignore critical constitutional issues effecting the fabric of our system of government.

The Honorable Harry E. Claiborne respectfully submits that our parallel House of Representatives/House of Commons, Senate/House of Lords impeachment proceedings to not permit for less than a full trial before the entire Senate.

No research has shown of any reference to a Committee of the Lords for hearing of the evidence. No less an authority than **Raoul Berger, Charles Warren Senior Fellow** in American Legal History, Harvard Law School, in his book, **Impeachment: The Constitutional Problems** (Harvard University Press, Cambridge, Mass., 1973) has so stated at page 171. In fact, a statement made by the Managers of the Lords at a conference between members of the Lords and Commons (reported January 18, 1691) that "In the case of impeachments, which are the groans of the people . . . and carry with them a great supposition of guilt than any other accusation, there all the Lords must be judge." 4 Hatsell 343, 33, 342.

> When you are called upon to arraign an individual, and that individual a judge, everyone must be anxious that the attendance should be as full as possible. 7 **Parl. Deb.** 762 (1806). **See also, Plucknett, Concise History,** 232 of 1 Holdsworth 389 (7th Ed., 1956).[2]

Judge Claiborne would submit that impeachment is a carefully delineated process, tolerated only if exercised within bounds. "Limits" on Congress determined by Congress would be no limits at all. **Federalists Papers Nos. 65 and 78.** It "cannot be the natural presumption . . . that the legislat ive body are themselves the constitutional judges of their own powers. . . ." **Federalist Paper No. 78** at 506.

Judge Harry E. Claiborne respectfully prays that he is not faced with a similar factual scenario as existed at the time of the impeachment of President Andrew Johnson. that is that "prejudgment on the part of most senators . . . was brazenly announced." **John Fitzgerald Kennedy, Profiles in Courage,** 133 (N.Y., 1961). He would specifically request that the small advisory board of Senators be disbanded, and that he not be estopped from a full trial before the full Senate without the unwarranted burden of collateral estoppel.

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[2] Impeachment trials have averaged from sixteen to seventeen days. **Borkin, Joseph - The Corrupt Judge,** p. 195 (New York, C.N.Potter, 1962).

The House of Representatives does acknowledge in its pleadings that the Senate does not have to accept its proposals and that they are surely to impact the country for centuries to come.

The House further acknowledged that collateral estoppel is a function of judicial economy and has never been cited for the proposition that the wholly distinct government function of judicial trial was ever intended to substitute for an impeachment trial, which is legislative in nature.

In fact, all those proposing a swift conviction on impeachment stood silent when Judge Claiborne argued that he could not be tried in a judicial proceeding prior to his actual impeachment and conviction. If the judicial function was an autonomous event, **so, too, should his impeachment be.**

The cases cited by the House deal with judicial or administrative proceedings, none which rise to the constitutional level of the impeachment process. Those recognize that a litigant can **always** raise a due process claim when faced with a second proceeding. For example, in **Otherson v. Department of Justice,** 711 F.2d 267, 272, the United States Court of Appeals for the District of Columbia Circuit recognized that a litigant "may always argue" that a prior proceeding failed to permit him a full and fair opportunity to present his case in the first proceeding.

Unlike the petitioner in **Gray v. Commissioner of the Internal Revenue,** 708 F.2d 243 (6th Cir., 1983), another case cited by the House, Judge Claiborne has not pled guilty but instead vehemently proclaims his innocence.

CONCLUSION

Judge Claiborne contends the presiding judge in his jury trial withheld exculpatory evidence and influenced the jury to convict him. What purpose would be served by refusing to hear the full case and all the evidence, other than to cover up wrongdoing by his accusers and to hinder the freedom and independence of the judiciary?

The Claiborne Impeachment Trial, if evidence is allowed to be presented, will detail a conscious "frame-up" as scandalous as the Dreyfus case exposed by Emile Zola.

This Nation is not immune from such attempts to pervert our system of justice.

Here, we are confronted with a particularly sinister form of "court packing" in which a particular ideological and political clique in the Executive and Judicial Branches have joined forces to remove a judge, probably not intended to be the only one with whom they disagree.

An examination of this case will not only require hard work, by the Senators and their staffs which could be shirked easily, it will cause all Americans to critically examine some of our most cherished beliefs and institutions. As Americans, we know we have the best system of justice in the world. It is not easy for any of us to accept that it can be corrupted by a few ambitious and unprincipled prosecutors and agents. Like all human institutions our criminal justice system is no more perfect than Pentagon procurement procedures and NASA's O-Rings.

Our Courts as well must assume the integrity and objectivity of FBI agents and Justice Department prosecutors. However, the computer programmer's aphorism, "garbage in, garbage out" applies as well to this weakness of our justice system. The Courts and Yablonsky's superiors in the Executive saw Judge Claiborne through the jaundiced eyes of a vengeful, suspicious and morally bankrupt FBI supervisor.

Quis custodes custodet? Who will guard us from overreaching prosecutors such as Steven Shaw and unscrupulous agents such as Joseph Yablonsky? The succinct Latin set forth the ancient riddle as well today as in the times of the Romans. The drafters of our Constitution wisely considered that the solution to the dilemma lay in a separation of powers -- and in eternal vigilance by the people.

Respectfully Submitted:
HARRY E. CLAIBORNE

By__________________________
Oscar B. Goodman, Esq. and
Honorable Howard W. Cannon

Attorneys for Respondent

II.G

IN THE SENATE OF THE UNITED STATES

SITTING AS A COURT OF IMPEACHMENT

Impeachment of Judge)
Harry E. Claiborne)

MOTION THAT SENATE CONVENE, AS A COURT OF IMPEACHMENT TO RESOLVE PRETRIAL MOTIONS FILED BY THE HONORABLE HARRY E. CLAIBORNE, RESPONDENT.

The Respondent, the Honorable Harry E. Claiborne, by and through his counsel, Oscar B. Goodman, Esq. and the Honorable Howard W. Cannon, respectfully moves the Senate to convene as a court of impeachment to resolve pretrial motions that have been filed on behalf of the Respondent:

1. Motion to Declare "Rule XI, Rules of Procedure and Practice in the Senate when Sitting on Impeachment Trials" as unconstitutional;

2. Motion to Dismiss the Articles of Impeachment on the grounds they do not state impeachable offenses;

3. Motion for full and fair impeachment trial before the entire Senate of the United States, or in the alternative, for dismissal; and

. . .

. . .

4. Motion to Designate "Beyond a Reasonable Doubt" as the standard of proof in the impeachment trial.

Respectfully Submitted:

HARRY E. CLAIBORNE

By Oscar B Goodman
Oscar B. Goodman, Esq.
Honorable Howard W. Cannon
Attorneys for Respondent

II.H

IN THE SENATE OF THE UNITED STATES

SITTING AS A COURT OF IMPEACHMENT

Impeachment of Judge)
Harry E. Claiborne)

MOTION TO DESIGNATE "BEYOND A REASONABLE DOUBT" AS THE STANDARD OF PROOF IN THE IMPEACHMENT TRIAL

The Respondent, Judge Harry E. Claiborne, through his counsel, Oscar B. Goodman, Esq. and, the Honorable Howard W. Cannon, respectfully moves the Senate to designate "Beyond a Reasonable Doubt" as the standard of proof in the impeachment trial of said Respondent. The grounds in support of this Motion are set forth in the Memorandum attached hereto and incorporated herein by reference.

Respectfully Submitted:
HARRY E. CLAIBORNE

By ____________________
Oscar B. Goodman, Esq.
Honorable Howard W. Cannon
Attorneys for Respondent

MEMORANDUM IN SUPPORT OF MOTION TO DESIGNATE "BEYOND A REASONABLE DOUBT" AS THE STANDARD OF PROOF IN THE IMPEACHMENT TRIAL.

The Constitution, Article III, Section 2, recognizes that an impeachment trial is in the nature of a criminal trial when it states that "the trial of crimes, except in cases of impeachment, shall be by jury".

The standard of proof applicable to all criminal trials is that of "proof beyond a reasonable doubt".

Historically, all impeachment trials have been conducted in the nature of a criminal proceeding.

For Judge Claiborne the consequences of the trial are grave. The prosecutor must be held to the highest burden of proof in establishing the truth of the matters asserted.

Respectfully Submitted:

HARRY E. CLAIBORNE

By ____________________
Oscar B. Goodman, Esq.
Honorable Howard W. Cannon
Attorneys for Respondent

II.I

IN THE SENATE OF THE UNITED STATES
SITTING AS A COURT OF IMPEACHMENT

Impeachment of Judge)
Harry E. Claiborne)

MOTION FOR BILL OF PARTICULARS

The Respondent, Judge Harry E. Claiborne, by and through his counsel, Oscar B. Goodman, Esq. and the Honorable Howard W. Cannon, respectfully requests responses from the House of Representatives to the instant Bill of Particulars.

Pertaining to Article 4 of the Articles of Impeachment, please state the following:

(1) Any and all acts and facts upon which you rely in asserting that Judge Claiborne was and is guilty of misbehavior. In answering this question, articulate all acts of misbehavior upon which you will be relying.

(2) Any and all acts and facts upon which you rely in indicating that Judge Claiborne is guilty of misdemeanors in office. Articulate all said misdemeanors and the dates of said occurrences.

(3) Any and all duties which you believe Judge Claiborne violated as it pertains to allegedly failing to uphold and obey the Constitution and laws of the United States.

(4) Any and all occasions when it is alleged that Judge

Claiborne failed to uphold the integrity of the judiciary.

(5) Any and all occasions when it is alleged that Judge Claiborne failed to perform the duties of his office.

(6) Any and all occasions upon which you rely in asserting that Judge Claiborne did not perform the duties of his office impartially, and

(a) Articulate all acts of alleged impartiality known, and

(b) Articulate all acts of impartiality upon which you intend to rely.

(7) The manner and means in which you allege that Judge Claiborne ". . .betrayed the trust of the people of the United States. . .".

(8) Any and all acts and facts upon which you rely in asserting that Judge Claiborne brought disrepute on the Federal Courts and the administration of justice by the Courts.

(9) Part of Article 4 asserts that Judge Claiborne was and is guilty of misbehavior as well as misdemeanors. Articulate all acts of misbehavior upon which you intend to rely.

(10) Articulate how said acts of misbehavior warrant impeachment, trial and removal from office.

Respectfully Submitted:
HARRY E. CLAIBORNE

By Oscar B. Goodman
Oscar B. Goodman, Esq.
Honorable Howard W. Cannon
Attorneys for Respondent

II.J

IN THE SENATE OF THE UNITED STATES
SITTING AS A COURT OF IMPEACHMENT

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Impeachment of Judge)
Harry E. Claiborne)

MOTION FOR DISCOVERY

The Respondent, Judge Harry E. Claiborne, by and through his counsel, Oscar B. Goodman, Esq. and the Honorable Howard W. Cannon, respectfully moves the Senate to compel the discovery of previously sealed reports, transcripts of grand jury proceedings and exculpatory materials. The production of such materials is necessary and appropriate for the Senate to fulfill its co-equal role in reviewing the full record and determining whether the Executive and the Judicial Branches have fulfilled their Constitutionally mandated duty of providing substantive due process to Respondent, Judge Harry E. Claiborne.

Respectfully Submitted:
HARRY E. CLAIBORNE

By ______________________
Oscar B. Goodman, Esq. and
Honorable Howard W. Cannon

Attorneys for Respondent

MEMORANDUM IN SUPPORT OF MOTION FOR DISCOVERY

Judge Harry E. Claiborne has alleged that he was wrongfully targeted by vindictive Executive Branch officers and convicted in proceedings in which hand-picked judges, members of the Judicial Branch, refused him access to critical exculpatory evidence.

Rule 6(e)(3)(C)(i) of the Federal Rules of Criminal Procedure provides that grand jury matters may be disclosed "when so directed by a court preliminarily to or in connection with a judicial proceeding." The Senate, sitting as a Court of Impeachment, is clearly "a court" within the contemplation of the Rule. The impeachment trial to be held is "a judicial proceeding."

Judge Harry Claiborne was the target of at least four separate grand jury proceedings. His claim that the Executive and Judicial Branches abused the grand jury process cannot be effectively presented to or determined by the Senate unless a full disclosure of such material is made to the Senate and to the Respondent.

In particular, impeaching and exculpatory evidence is likely to be found in the testimony before the Grand Jury of Witnesses Joseph Wright, Constance Wright and Charlotte Travaglia.

Impeaching and exculpatory evidence exists in the correspondence between and among former FBI Special Agent-In-Charge, Joseph Yablonsky, and his superior, William Webster, Director of the FBI; former Strike Force Chief, Geoffrey Anderson, Attorney General William French Smith and other members of the FBI and Department of Justice. Judge Claiborne has obtained partial access to some of the exculpatory evidence and has learned of the existence of such documents through partial disclosures made to Charles Lee pursuant to The Freedom of Information and Privacy Acts. Such documents establish that Judge Claiborne was targeted in an abortive "sting" operation which Geoffrey Anderson opined was not susceptible to "insurmountable problems" due to "entrapment claims." Other covert operations directed toward Judge Claiborne and those who refused to collaborate in framing him are referred to therein.

Judge Claiborne respectfully submits that it is necessary and appropriate for the Senate to Order the production of all such materials so that the Senate may exercise its fully informed and independent judgment as required by the Constitution.

Respectfully Submitted:
HARRY E. CLAIBORNE

By ______________________
Oscar B. Goodman, Esq. and
Honorable Howard W. Cannon

Attorneys for Respondent

United States Senate
WASHINGTON, DC 20510

6 September 1986

III. MEMORANDUM FOR THE RECORD

On Saturday, September 6, 1986, at 5:20 PM, The Managers on the part of the House of Representatives on the articles of impeachment against Judge Harry E. Claiborne delivered to the Committee on Impeachment of the United States Senate further pre-trial documents consisting of the following items:

- "Notice of Filing";
- "Supplemental Pretrial Statement...";
- "Motion to Accept as Substantive Evidence Certain Testimony and Documents...";
- "Memorandum in Support..." of the above motion;
- "Motion to Accept Prior Admissions of Judge Claiborne as Substantive Evidence...";
- "Memorandum in Support..." of the above motion; and
- "Application...For the Issuance of Subpoenas".

Copies of this filing are being distributed to the Senate Impeachment Committee Members and to their respective Staff Representatives on Monday, September 8, 1986.

Signed:
Anthony L. Harvey

Anthony L. Harvey
Clerk
Committee on Impeachment

III.A

IN THE SENATE OF THE UNITED STATES

SITTING AS A COURT OF IMPEACHMENT

Impeachment of Judge)
Harry E. Claiborne)

NOTICE OF FILING

TO: Mr. Anthony Harvey
Clerk of the Committee on Rules and Administration
United States Senate (SR-318)

PLEASE TAKE NOTICE that on this 6th day of September, 1986, the United States House of Representatives has filed with the Clerk of the Committee on Rules and Administration of the United States Senate, an original and thirty copies of the following:

(a) Supplemental Pretrial Statement of House of Representatives;

(b) Motion To Accept as Substantive Evidence Certain Testimony and Documents (Motion #4);

(c) Memorandum in Support of Motion To Accept as Substantive Evidence Certain Testimony and Documents;

(d) Motion To Accept Prior Admissions of Judge Claiborne as Substantive Evidence (Motion #5);

(e) Memorandum In Support of Motion To Accept Prior Admissions of Judge Claiborne; and

(f) Application of the House of Representatives For the Issuance of Subpoenas

Simultaneous with the filing of the above described documents, the same were served on opposing counsel, Oscar B. Goodman, Esquire, by federal express delivery, and on The Honorable Howard W. Cannon by messenger.

THE UNITED STATES
HOUSE OF REPRESENTATIVES

By Nicholas D. Chabraja
Nicholas D. Chabraja
Special Counsel

Managers of the House of Representatives

Peter W. Rodino, Jr.	Hamilton Fish, Jr.
Robert W. Kastenmeier	Henry J. Hyde
Romano L. Mazzoli	Thomas N. Kindness
William J. Hughes	Michael DeWine
Dan Glickman	

Impeachment Trial Staff

Nicholas D. Chabraja, Special Counsel
David W. DeBruin, Associate Special Counsel

House Judiciary Committee Staff Participating in Impeachment Trial Preparation

M. Elaine Mielke, General Counsel
Alan F. Coffey, Jr., Associate Counsel
Judith Bailey, Counsel
Daniel M. Freeman, Counsel
Gary G. Goldberger, Counsel
Warren S. Grimes, Counsel
Joseph V. Wolfe, Counsel
Jonathan R. Yarowsky, Counsel

IN THE SENATE OF THE UNITED STATES

Sitting As A Court Of Impeachment

In re)
)
)
)
IMPEACHMENT OF JUDGE)
HARRY E. CLAIBORNE)

SUPPLEMENTAL PRETRIAL STATEMENT OF THE HOUSE OF REPRESENTATIVES

The House of Representatives, through its Managers and Counsel, respectfully submits this supplemental pretrial statement.

In the Pretrial Statement of the House of Representatives, filed August 28, 1986, the House of Representatives stated that it anticipated that certain matters would be established through stipulation. The stipulation primarily was designed to prove the first element of Articles I and II of the Articles of Impeachment, specifically,

> that Judge Claiborne made or subscribed a tax return for [1979 and 1980] that was incorrect as to a material matter.

See Pretrial Statement of the House of Representatives, at 2 (August 28, 1986); *United States* v. *Marabelles*, 724 F.2d 1374, 1380 (9th Cir. 1984). This element of the offense had not been contested at Judge Claiborne's criminal trial.[1]

On September 3, 1986, Counsel for Judge Claiborne informed Counsel for the House of Representatives that Judge Claiborne will not sign a stipulation at this impeachment proceeding.

In lieu of the anticipated stipulation, the House of Representatives will establish, in the following manner, that Judge Claiborne received and negotiated checks representing income received in 1979 and 1980 that was not reported on his income tax returns: (1) through prior admissions under oath by Judge Claiborne; (2) through the prior sworn testimony of witnesses; and, if necessary, (3) through the live testimony of these same witnesses.

In prior proceedings, Judge Claiborne acknowledged under oath that he received legal fee income in 1979 and 1980 that was not reported on his tax returns. It is proper for the

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[1] In his opening statement, Mr. Oscar B. Goodman, counsel for Judge Claiborne, described the 1979 tax return as "an incorrect report" and the 1980 return as "an abortion or an aberration." Transcript of Proceedings at 23-24, 34 (August 2, 1984). He further declared:

> So the only issue, the only issue that we see from the defense point of view in this adversary system is whether or not Judge Claiborne intentionally filed an incorrect return.

Id., at 24.

Senate to accept these admissions as substantive evidence.[2] Specifically, the admissions of Judge Claiborne include, but are not necessarily limited to, the following:

1. that he continued to receive fee income on a regular basis after he became a judge. Transcript of Proceedings (second trial), 1009 (August 7, 1984).

2. that he received a check from James J. Brown dated January 5, 1979, in the amount of $3,381.10, which he deposited at the Pioneer Citizens Bank. Transcript of Proceedings (first trial), 3146 (April 2, 1984).

3. that he received a check from James J. Brown dated January 19, 1979, in the amount of $17,500.00, which he deposited at the Pioneer Citizens Bank. Id.

4. that he received a check from James J. Brown dated January 26, 1979, in the amount of $833.33, which he cashed at the Horseshoe Club. Id.

5. that he received a check from James J. Brown dated January 26, 1979, in the amount of $84.38, which he deposited at the Pioneer Citizens Bank. Id.

6. that he received a check from James J. Brown dated February 15, 1979, in the amount of $1,106.66, which he cashed at the Horseshoe Club. Id.

7. that he received a check from James J. Brown dated July 19, 1979, in the amount of $7,000.00, which he deposited at the Pioneer Citizens Bank. Id., at 3147

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[2] With this supplemental pretrial statement, the House of Representatives has filed a motion formally requesting that the Senate accept prior admissions of Judge Claiborne as substantive evidence.

8. that he received a check from James J. Brown dated August 31, 1979, in the amount of $2,905.90, which he cashed at the Horseshoe Club. _Id_.

9. that he received a check from James J. Brown dated November 13, 1979, in the amount of $3,011.56, which he cashed at the Horseshoe Club. _Id_.

10. that he received a check from James J. Brown dated November 13, 1979, in the amount of $250.00, which he deposited at the Pioneer Citizens Bank. _Id_.

11. that he received a check from Annette Quintana dated January 16, 1979, in the amount of $1,000.00, which he cashed at the Holiday Hotel in Reno, Nevada. _Id_., at 3148.

12. that he received a check from Annette Quintana dated February 12, 1979, in the amount of $1,000.00, which he could not determine the manner in which it was negotiated. _Id_.

13. that he received a check from Annette Quintana dated March 9, 1979, in the amount of $1,000.00, which he could not determine the manner in which it was negotiated. _Id_.

14. that he received a check from Annette Quintana dated April 12, 1979, in the amount of $1,000.00, which he deposited at the Pioneer Citizens Bank. _Id_.

15. that he received a check from Annette Quintana dated May 14, 1979, in the amount of $1,000.00, which he cashed at the Horseshoe Club. _Id_., at 3149.

16. that he received a check from James Brown dated August 6, 1978, in the amount of $803.30, which he believed he deposited in the First National Bank. _Id_., at 3168.

17. that he received a check from James Brown dated November 7, 1980, in the amount of $7,100.19, which he believed he deposited in the First National Bank. _Id_.

18. that he received a check from Peter Echeverria on January 3, 1980, in the amount of $42,452.34, which he deposited in the Pioneer Citizens Bank. Id., at 3169.

19. that he received a check from Hochman, Salkin and DeRoy dated August 15, 1980, in the amount of $37,500.00, which he cashed at the Golden Nugget Casino. Id., at 3169-3170.

20. that he maintained a financial diary, identified at both trials as Defendant's Exhibit 47, in which he recorded his fee collections. Transcript of Proceedings (second trial), 857-858 (August 6, 1984).

21. that the entries in the diary -- which reflect legal fees of $41,073.91 for 1979 and $87,912.43 for 1980 -- are an "absolutely" accurate record of fees that Judge Claiborne received. Id., at 859, 863.

22. that, when he was in private practice, it was Judge Claiborne's regular practice to have his checks from fees deposited in a bank account. Id., at 1008 (August 7, 1984).

23. that, for all the years in which Mr. Joseph C. Wright was his accountant, it was Judge Claiborne's practice to deposit checks from legal fee income into his bank account. Transcript of Proceedings (first trial), 3280 (April 3, 1984).

24. that a cash transaction would be much easier to conceal than a check transaction. Id., at 3281.

25. that Mr. Joseph C. Wright, Judge Claiborne's accountant for many years and the preparer of the 1979 return, is "highly qualified and exceedingly honest." Id., at 3167 (April 2, 1984).

26. that he received $41,072.93 in legal fee income for 1979, but reported only $22,332.87 of those fees. Opening Statement of Oscar B. Goodman, Transcript of Proceedings, 23-24 (August 2, 1984).

27. that the 1979 income tax return "in fact ... was an incorrect report." Id.

28. that the 1980 income tax return was "virtually ... an abortion or an aberration." Id., at 34.

29. that the only issue as to whether Judge Claiborne was guilty of a criminal offense was whether or not he "intentionally filed an incorrect return." Id., at 24.

At Judge Claiborne's criminal trial, several witnesses testified that they paid legal fee income to Judge Claiborne. The testimony of these witnesses was made under oath, was subject to full cross-examination by Counsel for Judge Claiborne, and was in fact not disputed. It is proper for the Senate to accept the prior sworn testimony of these witnesses as substantive evidence.[3] Specifically, the identity of these witnesses, and the substance of their prior testimony, is as follows:

1. Patricia Hartey, custodian of records for the Ogden, Utah Service Center of the Internal Revenue Service. Ms. Hartey identified tax filings by Judge Claiborne for the years 1979 and 1980. Transcript of Proceedings, 2-17 (August 2, 1984).

2. James J. Brown, Las Vegas attorney, formerly associated in practice with Judge Claiborne. Mr. Brown testified about a fee sharing agreement he had with Judge Claiborne and checks he issued to Judge Claiborne in 1979 and 1980 pursuant to this arrangement. Id., at 17-44.

3. Annette Quintana, Las Vegas attorney, formerly associated in practice with Judge Claiborne. Ms. Quintana testified about a fee sharing arrangement she had with Judge Claiborne and checks she issued to Judge Claiborne in 1979 pursuant to this arrangement. Id., at 45-57.

3/ With this supplemental pretrial statement, the House of Representatives has filed a motion formally requesting that the Senate accept the prior sworn testimony of these witnesses as substantive evidence.

4. Frank Rothman, an attorney who formerly represented the estate of Sid Wyman, a client of Judge Claiborne's while the judge was in the private practice of law. Mr. Rothman testified about a legal fee paid to Judge Claiborne in 1980, and about a letter sent to him by Judge Claiborne. Id., at 67-80.

5. George DeRoy, an attorney with a law firm that represented the estate of Sid Wyman. Mr. DeRoy testified that he issued a check to Judge Claiborne in 1980 for legal services performed by Judge Claiborne while in private praotice for Sid Wyman. Id., at 80-87.

6. Peter Echeverria, a retired attorney who had represented a client with Judge Claiborne. Mr. Echeverria testified about a fee check he issued to Judge Claiborne for Judge Claiborne's work in the representation. Id., at 87-100.

7. Anita Praytor, operations officer and custodian of records of Valley Bank of Nevada, Las Vegas. Ms. Praytor identified five cashiers' checks drawn by Annette Quintana that were issued to and endorsed by Judge Claiborne. Id., at 57-63.

8. Danny Robert Huckaby, accountant, comptroller and overseer of the cashier's cage at the Holiday Hotel and Casino. Mr. Huckaby testified that a check written by Annette Quintana to Judge Claiborne was cashed by Judge Claiborne at the Holiday Hotel and Casino. Id., at 63-67.

9. Richard Nye, manager, Pioneer Citizens Bank, Las Vegas. Mr. Nye testified about the bank's records for 1979 and early 1980 relating to a checking account maintained at the bank of Judge Claiborne. Id., at 100-115.

10. David Settle, assistant vice-president of the First Interstate Bank of Nevada. Mr. Settle testified about the bank's records relating to a check written by Judge Claiborne in 1981 against his account at the bank. Id., at 360-368 (August 32, 1984).

11. Elaine Hildebrandt, branch manager, Adjudication Branch 2, U.S. Department of Treasury. Ms. Hildebrandt identified a tax refund check issued by the U.S. Treasury to Judge Claiborne for the year 1980. Id., at 368-372.

12. Annette Hensley, secretary to the Judicial Ethics Committee, Judicial Conference of the United States. Ms. Hensley identified the financial report filed by Judge Claiborne with the Judicial Ethics Committee for the year 1979. Id., at 372-381, 401-404, 451-455 (August 3-4, 1984).

13. Judge Bernard N. Decker, United States District Judge for the Northern District of Illinois. Judge Decker identified a financial disclosure form for 1979 filed by Judge Claiborne with the Judicial Conference of the United States and testified about the requirements for completing such financial disclosure forms. Id., at 404-437 (August 3, 1984).

These witnesses identified and authenticated the following documents. Each of these documents was admitted into evidence at trial, without objection as to their authenticity.

1. Check to Judge Claiborne from James Brown dated January 5, 1979 in the amount of $3,381.10, which Judge Claiborne endorsed and deposited to his account at the Pioneer Citizens Bank of Nevada.

2. Check to Judge Claiborne from James Brown dated January 19, 1979 in the amount of $17,500, which Judge Claiborne endorsed and deposited to his account at the Pioneer Citizens Bank of Nevada.

3. Check to Judge Claiborne from James Brown dated January 26, 1979 in the amount of $833.33, which Judge Claiborne endorsed and cashed at the Horseshoe Club casino.

4. Check to Judge Claiborne from James Brown dated January 26, 1979 in the amount of $84.38, which Judge Claiborne endorsed and deposited to his account at the Pioneer Citizens Bank of Nevada.

5. Check to Judge Claiborne from James Brown dated February 15, 1979 in the amount of $1,106.66, which Judge Claiborne endorsed and cashed at the Horseshoe Club casino.

6. Check to Judge Claiborne from James Brown dated July 19, 1979 in the amount of $7,000, which Judge Claiborne endorsed and deposited to his account at the Pioneer Citizens Bank of Nevada.

7. Check to Judge Claiborne from James Brown dated August 31, 1979 in the amount of $2,905.90, which Judge Claiborne endorsed and cashed at the Horseshoe Club casino.

8. Check to Judge Claiborne from James Brown dated November 13, 1979 in the amount of $250, which Judge Claiborne endorsed and deposited to his account at the Pioneer Citizens Bank of Nevada.

9. Check to Judge Claiborne from James Brown dated November 23, 1979 in the amount of $3,011.56, which Judge Claiborne endorsed and cashed at the Horseshoe Club casino.

10. Check to Judge Claiborne from Annette Quintana dated January 16, 1979 in the amount of $1,000, which Judge Claiborne endorsed and cashed at the Holiday Hotel and Casino.

11. Check to Judge Claiborne from Annette Quintana dated February 12, 1979 in the amount of $1,000, which Judge Claiborne endorsed and cashed at the Horseshoe Club casino.

12. Check to Judge Claiborne from Annette Quintana dated March 9, 1979 in the amount of $1,000, which Judge Claiborne endorsed and cashed at the Horseshoe Club casino.

13. Check to Judge Claiborne from Annette Quintana dated April 12, 1979 in the amount of $1,000, which Judge Claiborne endorsed and deposited to his account at the Pioneer Citizens Bank of Nevada.

14. Check to Judge Claiborne from Annette Quintana dated May 14, 1979 in the amount of $1,000, which Judge Claiborne endorsed and cashed at the Horseshoe Club casino.

15. The form 1040, 1979 federal income tax return, bearing a signature of Harry E. Claiborne, and filed by Judge Claiborne with the Internal Revenue Service on or about June 16, 1980.

16. The financial disclosure form for the year 1979 filed by Judge Claiborne on or about May 15, 1980 with the Judicial Ethics Committee pursuant to the Ethics in Government Act (28 U.S.C. 301 et. seq.).

17. Check to Judge Claiborne from Peter Echeverria dated December 31, 1979 in the amount of $42,452.34, which Judge Claiborne endorsed and deposited to his account at the Pioneer Citizens Bank of Nevada.

18. Check to Judge Claiborne from James Brown dated August 6, 1980 in the amount of $888.39, which Judge Claiborne endorsed and deposited to his account at the Pioneer Citizens Bank of Nevada.

19. Check to Judge Claiborne from George DeRoy of Hochman, Salkin & DeRoy dated August 15, 1980 in the amount of $37,500, which Judge Claiborne endorsed and cashed at the Golden Nugget Hotel and Casino.

20. Check to Judge Claiborne from James Brown dated November 7, 1980 in the amount of $7,071.19, which Judge Claiborne endorsed and deposited to his account at the Pioneer Citizens Bank of Nevada.

21. The form 1040, 1980 federal income tax return, bearing a signature of Harry E. Claiborne, and filed by Judge Claiborne with the Internal Revenue Service on or about June 15, 1981.

22. The form 1040-ES for 1980 prepared and submitted to the Internal Revenue Service for Harry E. Claiborne.

23. A check dated April 11, 1980 in the amount of $2,500 issued by Judge Claiborne to the Internal Revenue Service in payment of his estimated income tax for the first quarter of 1980.

24. A note handwritten by Judge Claiborne and sent by him to Frank Rothman in August, 1980.

25. A form 4868 "Application for Automatic Extension of Time to File U.S. Individual Income Tax Return" for 1980 dated April 13, 1981, bearing a signature of Harry E. Claiborne.

26. A check in the amount of $20,817.59 issued by Judge Claiborne to the Internal Revenue Service.

27. A refund check issued by the Internal Revenue Service to Judge Claiborne for the tax year 1980 in the amount of $44,256.00, which Judge Claiborne endorsed and cashed at the Golden Nugget Hotel and Casino.

In the event that the Senate does not accept this prior sworn testimony and previous authentication of documents, the House of Representatives will present the live testimony of these same witnesses. The House of Representatives expects that the testimony of such witnesses would be consistent in all respects with the testimony presented by them in United States v. Harry E. Claiborne, Dkt. No. CR-R-83-57 (D. Nev.) (trial concluding August 10, 1984). In that live testimony, the witnesses would authenticate again the documents identified above.

REBUTTAL

The Pretrial Statement of Judge Claiborne contains an extensive discourse concerning the alleged motivations of the parties who investigated and prosecuted this case, and the supposed manner in which certain evidence was obtained. It is the position of the House of Representatives that the sole issue properly before the Senate is whether Judge Claiborne willfully made or subscribed a false statement on his 1979 and 1980 income tax returns -- an issue to which Judge Claiborne devotes two pages of a 25-page pretrial statement. A man who has perpetrated a fraud upon the government, which is a felony under the laws of the United States, is not fit to be maintained as a federal judge. Even assuming that Judge Claiborne's wildest speculations were true -- a proposition that the House of Representatives emphatically does not endorse -- it is inconceivable that a man who willfully defrauded the government could remain a judge, and pass judgment on his fellow citizens, merely because misconduct was identified in the course of the investigation or prosecution. The sole focus of the House of Representatives has been, and the sole concern of the United States Senate should be, whether Judge Harry E. Claiborne has engaged in conduct that compels his removal from office.[4]

Should the Senate consider the allegations made by Judge Claiborne, the House of Representatives will present testimony of Mr. William Hendricks, Esq., United States Department of Justice, and such other rebuttal witnesses as may be appropriate, to demonstrate that the investigation of Judge

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4/ In a pleading that will be filed September 8, 1986, the House of Representatives formally will move the Senate to exclude from its consideration those matters raised in Judge Claiborne's pretrial statement that are irrelevant and collateral to the proceeding at hand.

Claiborne was conducted in good faith and that any evidence in the possession of the government was obtained in a lawful manner.

Respectfully submitted,

THE UNITED STATES
HOUSE OF REPRESENTATIVES

By Nicholas D. Chabraja

Managers of the House of Representatives

Peter W. Rodino, Jr.
Robert W. Kastenmeier
Romano L. Mazzoli
William J. Hughes
Dan Glickman

Hamilton Fish, Jr.
Henry J. Hyde
Thomas N. Kindness
Michael DeWine

Impeachment Trial Staff

Nicholas D. Chabraja, Special Counsel
David W. DeBruin, Associate Special Counsel

House Judiciary Committee Staff
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M. Elaine Mielke, General Counsel
Alan F. Coffey, Jr., Associate Counsel
Judith Bailey, Counsel
Daniel M. Freeman, Counsel
Gary G. Goldberger, Counsel
Warren S. Grimes, Counsel
Joseph V. Wolfe, Counsel
Jonathan R. Yarowsky, Counsel

IN THE SENATE OF THE UNITED STATES

SITTING AS A COURT OF IMPEACHMENT

In re	)	
	)	
IMPEACHMENT OF	)	Motion #4
JUDGE HARRY E. CLAIBORNE	)	

MOTION TO ACCEPT AS SUBSTANTIVE EVIDENCE CERTAIN TESTIMONY AND DOCUMENTS

The House of Representatives, through its managers and counsel, respectfully moves the Senate, sitting as a court of impeachment, to accept as substantive evidence, in lieu of live testimony, the prior sworn testimony of the witnesses listed below. The testimony was given by these witnesses at the second trial of Judge Claiborne in the United States District Court for the District of Nevada (United States v. Harry E. Claiborne, Dkt. No. CR-R-83-57) (trial concluding August 10, 1984).

The House of Representatives further moves the Senate to accept as substantive evidence, without further authentication, true copies of the documentary evidence listed below. The documents listed were admitted into evidence without objection at that same trial.

The reasons supporting this motion are set forth in the Memorandum in Support of Motion to Accept as Substantive Evidence Certain Testimony and Documents, filed herewith.

Witnesses

1. Patricia Hartey, custodian of records for the Ogden, Utah Service Center of the Internal Revenue Service. Ms. Hartey identified tax filings by Judge Claiborne for the years 1977 through 1980. She also testified that it is proper to report legal fee income on Schedule C. Transcript of Proceedings, 2-16 (August 2, 1984).

2. James Brown, Las Vegas attorney, formerly associated in practice with Judge Claiborne. Mr. Brown testified about his fee sharing arrangement with Judge Claiborne and checks he issued to Judge Claiborne in 1979 and 1980 pursuant to this arrangement. Id., 17-44.

3. Annette Quintana, Las Vegas attorney, formerly associated in practice with Judge Claiborne. Ms. Quintana testified about her fee sharing arrangement with Judge Claiborne and cashiers' checks she issued to Judge Claiborne in 1979 pursuant to this arrangement. Id., 45-57.

4. Frank Rothman, an attorney who formerly represented the estate of Sid Wyman, a client of Judge Claiborne's while Judge Claiborne was in the private practice of law. Mr. Rothman testified about a legal fee paid to Judge Claiborne in 1980 and about a letter sent to him by Judge Claiborne. Id., 67-80.

5. George DeRoy, an attorney with a law firm that represented the estate of Sid Wyman. Mr. DeRoy testified that he issued a check to Judge Claiborne in 1980 for legal services performed for Sid Wyman while Judge Claiborne was in private practice. Id., 81-87.

6. Peter Echeverria, a retired attorney who acted as co-counsel with Judge Claiborne in the representation of a client. Mr. Echeverria testified about a check he issued to Judge Claiborne for Judge Claiborne's work in that representation. Id., 87-100.

7. Anita Praytor, operations officer and custodian of records of Valley Bank of Nevada, Las Vegas. Ms. Praytor identified five cashiers' checks drawn by Annette Quintana that were issued to and endorsed by Judge Claiborne. Id., 57-63.

8. Danny Robert Huckaby, accountant, comptroller and overseer of the cashier's cage at the Holiday Hotel and Casino. Mr. Huckaby testified that a check written by Annette Quintana to Judge Claiborne was cashed by Judge Claiborne at the Holiday Hotel and Casino. Id., 63-67.

9. Richard Nye, manager, Pioneer Citizens Bank, Las Vegas. Mr. Nye testified about the bank's records for 1979 and early 1980 relating to a checking account maintained at the bank by Judge Claiborne. Id., 100-115.

10. David Settle, assistant vice-president of the First Interstate Bank of Nevada. Mr. Settle testified about the bank's records relating to a check written by Judge Claiborne in 1981 against his account at the bank. Id., 360-368 (August 3, 1984).

11. Elaine Hildebrandt, branch manager, Adjudication Branch 2, U.S. Department of Treasury. Ms. Hildebrandt identified a tax refund check issued by the U.S. Treasury to Judge Claiborne for 1980. Id., 368-372.

12. Annette Hensley, secretary to the Judicial Ethics Committee, Judicial Conference of the United States. Ms. Hensley identified the financial report filed by Judge Claiborne with the Judicial Ethics Committee for 1979. Id., 372-404.

13. Bernard N. Decker, United States District Judge for the Northern District of Illinois. Judge Decker identified a financial disclosure form for 1979 filed by Judge Claiborne with the Judicial Conference of the United States and testified about the requirements for completing such financial disclosure forms. Id., 404-437.

Documents

1. Check to Judge Claiborne from James Brown dated January 5, 1979 in the amount of $3,381.10, which Judge Claiborne endorsed and deposited to his account at the Pioneer Citizens Bank of Nevada. A true and correct copy of this check is attached hereto as House Exhibit 1. Admitted into evidence without objection at trial. Transcript of Proceedings, 24, 105 (August 2, 1984).

2. Check to Judge Claiborne from James Brown dated January 19, 1979 in the amount of $17,500, which Judge Claiborne endorsed and deposited to his account at the Pioneer Citizens Bank of Nevada. A true and correct copy of this check is attached hereto as House Exhibit 2. Admitted into evidence without objection at trial. _Id_., 24, 105.

3. Check to Judge Claiborne from James Brown dated January 26, 1979 in the amount of $833.33, which Judge Claiborne endorsed and cashed at the Horseshoe Club Casino (a.k.a. Horseshoe Casino). A true and correct copy of this check is attached hereto as Exhibit 3. Admitted into evidence without objection at trial. _Id_., 24.

4. Check to Judge Claiborne from James Brown dated January 26, 1979 in the amount of $84.38, which Judge Claiborne endorsed and deposited to his account at the Pioneer Citizens Bank of Nevada.

A true and correct copy of this check is attached hereto as Exhibit 4. Admitted into evidence without objection at trial. Id., 24, 105.

5. Check to Judge Claiborne from James Brown dated February 15, 1979 in the amount of $1,106.66, which Judge Claiborne endorsed and cashed at the Horseshoe Club casino. A true and correct copy of this check is attached hereto as House Exhibit 5. Admitted into evidence without objection at trial. Id., 24.

6. Check to Judge Claiborne from James Brown dated July 19, 1979 in the amount of $7,000, which Judge Claiborne endorsed and deposited to his account at the Pioneer Citizens Bank of Nevada. A true and correct copy of this check is attached hereto as House Exhibit 6. Admitted into evidence without objection at trial. Id., 24, 111.

7. Check to Judge Claiborne from James Brown dated August 31, 1979 in the amount of $2,905.90, which Judge Claiborne endorsed and cashed at the Horseshoe Club Casino. A true and correct copy of this check is attached hereto as House Exhibit 7. Admitted into evidence without objection at trial. Id., 24.

8. Check to Judge Claiborne from James Brown dated November 13, 1979 in the amount of $250, which Judge Claiborne endorsed and deposited to his account at the Pioneer Citizens Bank of Nevada.

A true and correct copy of this check is attached hereto as House Exhibit 8. Admitted into evidence without objection at trial. Id., 24, 112.

9. Check to Judge Claiborne from James Brown dated November 23, 1979 in the amount of $3,011.56, which Judge Claiborne endorsed and cashed at the Horseshoe Club Casino. A true and correct copy of this check is attached hereto as House Exhibit 9. Admitted into evidence without objection at trial. Id., 24.

10. Check to Judge Claiborne from Annette Quintana dated January 16, 1979 in the amount of $1,000, which Judge Claiborne endorsed and cashed at the Holiday Hotel and Casino. A true and correct copy of this check is attached hereto as House Exhibit 10. Admitted into evidence without objection at trial. Id., 51.

11. Check to Judge Claiborne from Annette Quintana dated February 12, 1979 in the amount of $1,000, which Judge Claiborne endorsed and cashed at the Horseshoe Club Casino. A true and correct copy of this check is attached hereto as House Exhibit 11. Admitted into evidence without objection at trial. Id., 51.

12. Check to Judge Claiborne from Annette Quintana dated March 9, 1979 in the amount of $1,000, which Judge Claiborne endorsed and cashed at the Horseshoe Club Casino. A true and

correct copy of this check is attached hereto as House Exhibit 12. Admitted into evidence without objection at trial. Id., 51.

13. Check to Judge Claiborne from Annette Quintana dated April 12, 1979 in the amount of $1,000, which Judge Claiborne endorsed and deposited to his account at the Pioneer Citizens Bank of Nevada. A true and correct copy of this check is attached hereto as House Exhibit 13. Id., Admitted into evidence without objection at trial. Id., 51, 107.

14. Check to Judge Claiborne from Annette Quintana dated May 14, 1979 in the amount of $1,000, which Judge Claiborne endorsed and cashed at the Horseshoe Club Casino. A true and correct copy of this check is attached hereto as House Exhibit 14. Admitted into evidence without objection at trial. Id., 51.

15. Form 1040, 1979 federal income tax return, signed by Judge Claiborne, and filed by Judge Claiborne with the Internal Revenue Service on or about June 16, 1980. A true and correct copy of this tax return is attached hereto as House Exhibit 15. Admitted into evidence without objection at trial. Id., 5.

16. Financial disclosure form for the year 1979 filed by Judge Claiborne on or about May 15, 1980 with the Judicial Ethics Committee pursuant to the Ethics in Government Act (28 U.S.C. App. 301 et seq.). A true and correct copy of this financial

disclosure form is attached hereto as House Exhibit 16. Admitted into evidence without objection to its authenticity at trial. Id., 378 (August 3, 1984).

17. Handwritten memorandum written by Judge Claiborne and sent to his accountant, Joseph Wright, on or about March 1, 1980. This memorandum contains marginal notations made by Mr. Wright at a later date. A true and correct copy of this memorandum is attached hereto as Exhibit 17. Admitted into evidence without objection at trial. Id., 156 (August 2, 1984).

18. Three letters written to financial institutions by Joseph Wright in March and May 1980. True and correct copies of these letters are attached hereto as House Exhibit 18 (A)-(C). Admitted into evidence without objection at trial. Id., 159.

19. Workpaper prepared by Joseph Wright on or about April 11, 1980 in connection with his preparation of Judge Claiborne's federal income tax filings. A true and correct copy of this workpaper is attached hereto as House Exhibit 19. Admitted into evidence without objection at trial. Id., 165.

20. Form 4868 for 1979 prepared by Joseph Wright for Judge Claiborne, signed and filed by Mr. Wright with the Internal Revenue Service on or about April 11, 1980. A true and correct

copy of this Form 4868 is attached hereto as House Exhibit 20. Admitted into evidence without objection at trial. Id., 165.

21. Document containing financial information for 1979 written by Judge Claiborne and given to Mr. Wright after May 22, 1980 and before June 16, 1980 for use in Mr. Wright's preparation of Judge Claiborne's 1979 federal income tax return. The document also contains some handwritten information that was added by Mr. Wright after receipt. A true and correct copy of this document is attached hereto as House Exhibit 21. Admitted into evidence without objection at trial. Id., 170.

22. Pages from a book in which Judge Claiborne recorded his legal fee collections for the years 1978-1981. All of the legal fees he received in 1979 and 1980 are recorded in these pages. A true and correct copy of these pages is attached hereto as House Exhibit 22. Admitted into evidence without objection at trial. Id., 859 (August 6, 1984).

23. Check to Judge Claiborne from Peter Echeverria dated December 31, 1979 in the amount of $42,452.34, which Judge Claiborne endorsed and deposited to his account at the Pioneer Citizens Bank of Nevada. A true and correct copy of this check is attached hereto as House Exhibit 23. Admitted into evidence without objection at trial. Id., 90 (August 2, 1984).

24. Check to Judge Claiborne from James Brown dated August 6, 1980 in the amount of $888.39, which Judge Claiborne endorsed and deposited to his account at the Pioneer Citizens Bank of Nevada. A true and correct copy of this check is attached hereto as House Exhibit 24. Admitted into evidence without objection at trial. Id., 28.

25. Check to Judge Claiborne from George DeRoy dated August 15, 1980 in the amount of $37,500, which Judge Claiborne endorsed and cashed at the Golden Nugget Hotel and Casino. A true and correct copy of this check is attached hereto as House Exhibit 25. Admitted into evidence without objection at trial. Id., 28

26. Check to Judge Claiborne from James Brown dated November 7, 1980 in the amount of $7,071.19, which Judge Claiborne endorsed and deposited to his account at the Pioneer Citizens Bank of Nevada. A true and correct copy of this check is attached hereto as House Exhibit 26. Admitted into evidence without objection at trial. Id., 28.

27. Form 1040, 1980 federal income tax return, signed by Judge Claiborne, and filed by Judge Claiborne with the Internal Revenue Service on or about June 15, 1981. A true and correct copy of this tax return is attached hereto as House Exhibit 27. Admitted into evidence without objection at trial. Id., 8.

28. Form 1040-ES for 1980, prepared and submitted to the Internal Revenue Service on behalf of Harry E. Claiborne. A true and correct copy of this Form 1040-ES is attached hereto as House Exhibit 28. Admitted into evidence without objection at trial. Id., 165.

29. Check dated April 11, 1980 in the amount of $2,500 issued by Judge Claiborne to the Internal Revenue Service in payment of his estimated income tax for the first quarter of 1980. A true and correct copy of this check is attached hereto as House Exhibit 29. Admitted into evidence without objection at trial. Id., 165.

30. Note handwritten by Judge Claiborne and sent to Frank Rothman in August 1980. A true and correct copy of this note is attached hereto as House Exhibit 30. Admitted into evidence without objection at trial. Id., 72.

31. Letter dated April 6, 1981 from Jerry Watson to Judge Claiborne. A true and correct copy of this letter is attached hereto as House Exhibit 31. Admitted into evidence without objection at trial. Id., 797 (August 6, 1984).

32. Form 4868 "Application for Automatic Extension of Time to File U.S. Individual Income Tax Return" for 1980 dated April 13, 1981, signed and filed by Judge Claiborne, accompanied by a

check in the amount of $20,817.59 issued by Judge Claiborne to the Internal Revenue Service. A true and correct copy of this Form 4868 and the accompanying check is attached hereto as House Exhibit 32. Admitted into evidence without objection at trial. Id., 7 (August 2, 1984), 367 (August 3, 1984).

33. Refund check issued to Judge Claiborne for the year 1980 by the Internal Revenue Service in the amount of $44,256.00, which Judge Claiborne endorsed and cashed at the Golden Nugget Hotel and Casino. A true and correct copy of this check is attached hereto as House Exhibit 33. Admitted into evidence without objection at trial. Id., 369 (August 3. 1984).

Respectfully submitted,

THE UNITED STATES
HOUSE OF REPRESENTATIVES

By Nicholas D. Chabraja

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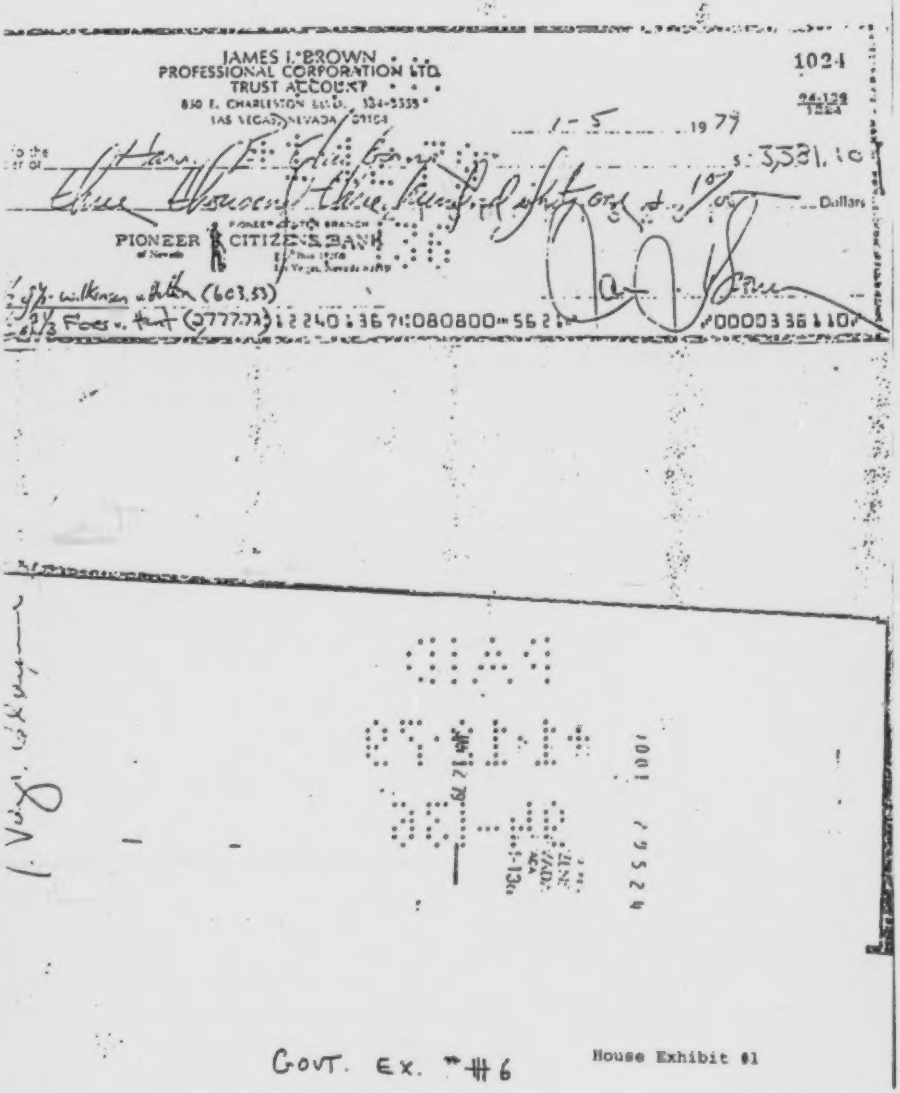


JAMES I. BROWN
PROFESSIONAL CORPORATION LTD.
TRUST ACCOUNT
830 E. CHARLESTON BLVD. 384-5333
LAS VEGAS, NEVADA 89104

1024

94-129
1224

1-5 1977

Pay to the order of Harry E. Claiborne $ 3,381.10

Three thousand three hundred eighty one & 10/100 Dollars

PIONEER of Nevada
PIONEER CITIZENS BANK

1/3 of J. Wilkinson v. Allen (603.53)
2/3 Fees v. Hunt (2777.77)

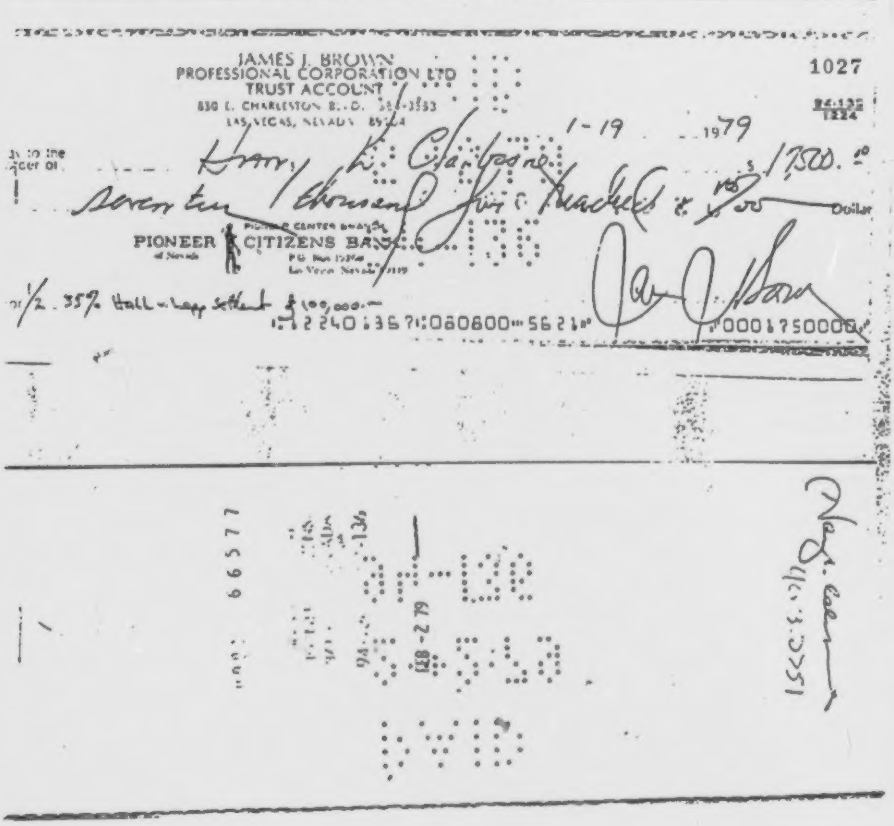
⑆ 1224 ⑆ 36 ⑈ 080800 ⑈ 562 ⑈ ⑈0000338110⑈

[illegible]

PAID

Govt. Ex. #6

House Exhibit #1



JAMES J. BROWN
PROFESSIONAL CORPORATION LTD
TRUST ACCOUNT
830 E. CHARLESTON BLVD. 384-3553
LAS VEGAS, NEVADA 89104

1027

94-135
1224

1-19 1979

Pay to the order of Harry E. Claiborne $ 17,500.00

Seventeen thousand five hundred & no/00 Dollars

PIONEER CENTER BRANCH
PIONEER CITIZENS BANK of Nevada
P.O. Box 15
Las Vegas, Nevada 89119

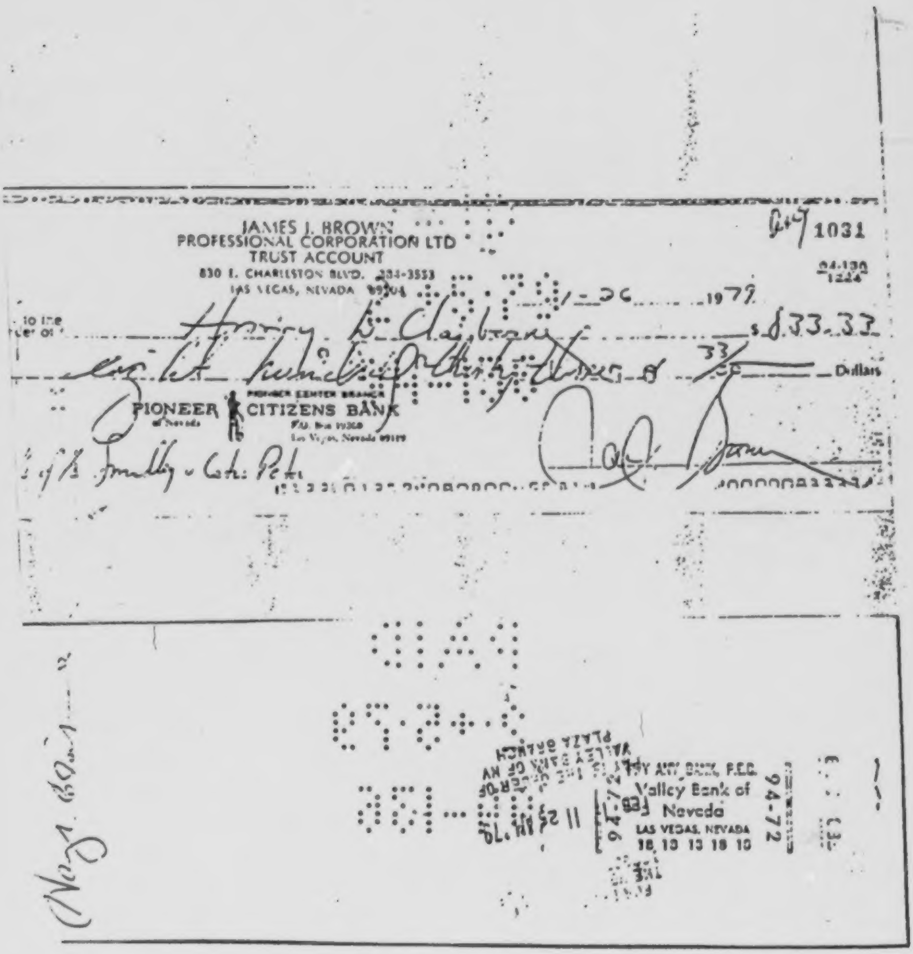
1/2 . 35% Hall-Happ settlement $100,000.—

⑆122401357⑆060800⑈5621⑈ ⑈0001750000⑈

66577

FEB-2 79

House Exhibit #2



JAMES J. BROWN
PROFESSIONAL CORPORATION LTD
TRUST ACCOUNT
830 E. CHARLESTON BLVD. 384-3553
LAS VEGAS, NEVADA 89104

1031

94-130
1224

1-26 1979

Pay to the order of Harry W. Claiborne $833.33

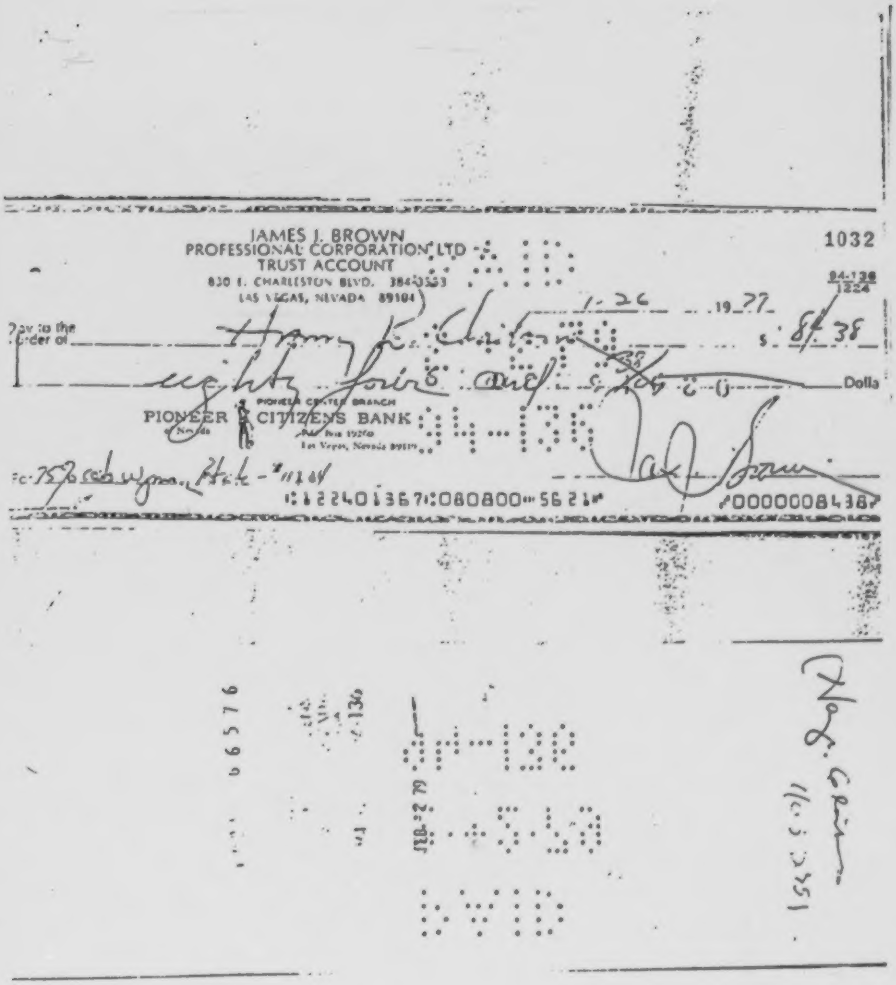
eight hundred thirty three & 33/ Dollars

PIONEER CITIZENS BANK of Nevada
PIONEER CENTER BRANCH
P.O. Box 19360
Las Vegas, Nevada 89119

PAY TO THE ORDER OF VALLEY BANK OF NV PLAZA BRANCH

PAY ANY BANK, P.E.G.
Valley Bank of Nevada
LAS VEGAS, NEVADA
94-72

House Exhibit #3



JAMES J. BROWN
PROFESSIONAL CORPORATION, LTD
TRUST ACCOUNT
830 E. CHARLESTON BLVD. 384-3553
LAS VEGAS, NEVADA 89104

1032

94-136
1224

1-26 19 77

Pay to the order of Harry E. Claiborne $ 84.38

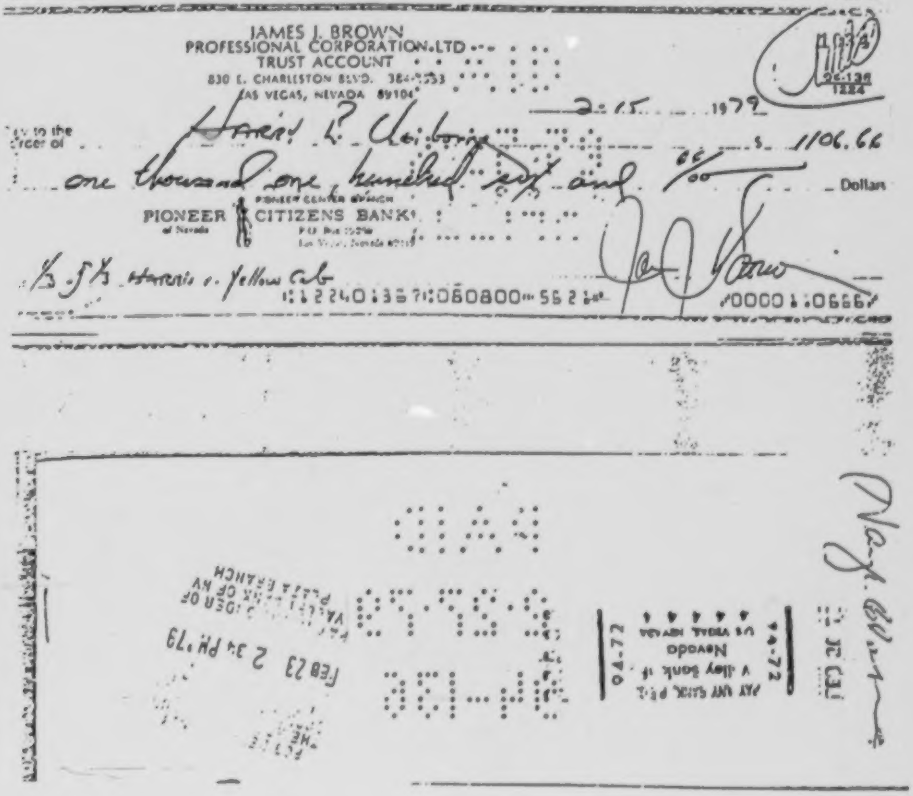
eighty four and 38/100 Dollars

PIONEER CITIZENS BANK of Nevada
PIONEER CENTER BRANCH
Las Vegas, Nevada

Jas. J. Brown

⑆122401367⑆080800⑈5621⑈ ⑈0000008438⑈

House Exhibit #4



JAMES J. BROWN
PROFESSIONAL CORPORATION, LTD
TRUST ACCOUNT
830 E. CHARLESTON BLVD. 384-7253
LAS VEGAS, NEVADA 89104

1034
94-134/1224

2-15 1979

Pay to the order of Harriet L. Claiborne $ 1106.66

one thousand one hundred six and 66/100 Dollars

PIONEER CENTER BRANCH
PIONEER CITIZENS BANK of Nevada
P.O. Box
Las Vegas, Nevada

1/3 of 1/3 Harris v. Yellow Cab

Joe J. Brown

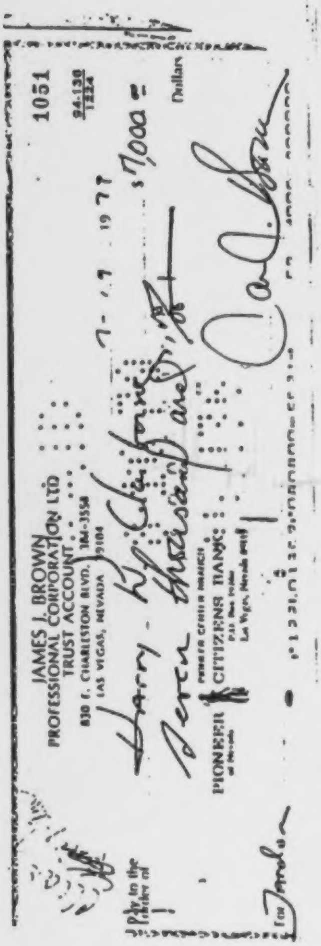
⑆122401357⑆060800⑈5521⑈ /0000110666/

PAY ANY BANK, P.E.G.
Valley Bank of Nevada
LAS VEGAS, NEVADA
94-72

FEB 23 2 34 PM '79
PAY TO THE ORDER OF
VALLEY BANK OF NV
PLAZA BRANCH

PAID

House Exhibit #5



JAMES J. BROWN
PROFESSIONAL CORPORATION LTD
TRUST ACCOUNT
830 E. CHARLESTON BLVD. 384-3558
LAS VEGAS, NEVADA 89104

1051

94-130/1224

7-17 1977

Pay to the order of Harry W. Claiborne $7,000.00

Seven thousand and no/100 Dollars

PIONEER CITIZENS BANK of Nevada
Las Vegas, Nevada

For

House Exhibit #6

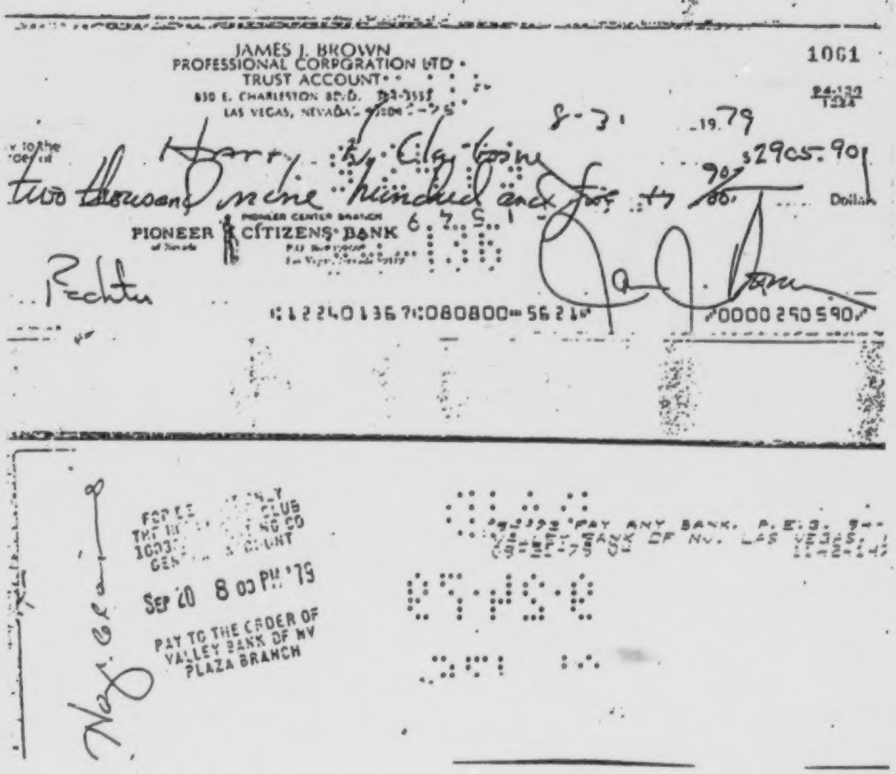
463-2751

1001 0699

PIONEER
BANK
94-13

ITIZENS
EVADA
EVADA
94-135

AUG 10 79



JAMES J. BROWN
PROFESSIONAL CORPORATION LTD
TRUST ACCOUNT
830 E. CHARLESTON BLVD. 382-3555
LAS VEGAS, NEVADA 89104

1061

94-130
1224

8-31 19 79

y to the
rder of Harry E. Claiborne $2905.90

two thousand nine hundred and five 90/100 Dolla

PIONEER
of Nevada
PIONEER CENTER BRANCH
CITIZENS BANK

6 7 5 1

Pechter

⑆1224013 67⑆080800⑈5621⑈ ⑈0000290590⑈

Harry E. Claiborne

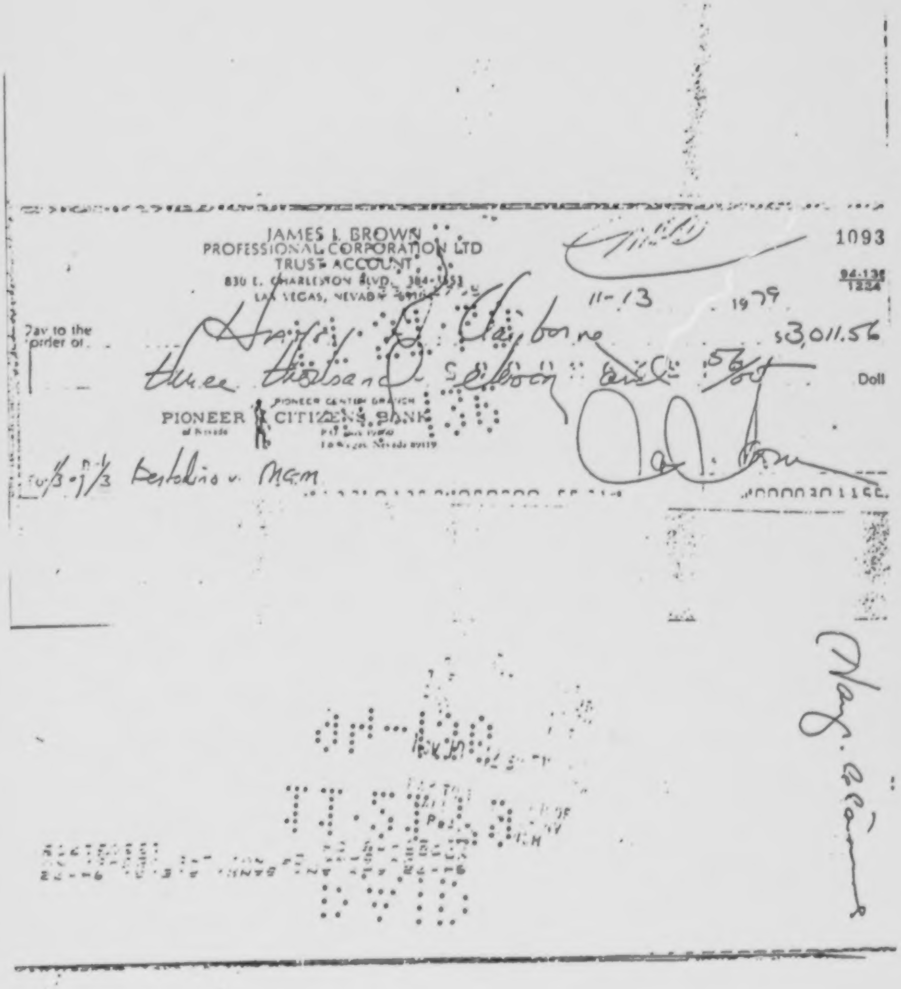
FOR DE[illegible] ONLY
THE [illegible] CLUB
[illegible] NG CO
1003[illegible] ACCOUNT
GEN[illegible]

SEP 20 8 00 PM '79

PAY TO THE ORDER OF
VALLEY BANK OF NV
PLAZA BRANCH

PAY ANY BANK. P.E.G.
VALLEY BANK OF NV. LAS VEGAS,

House Exhibit #7



JAMES I. BROWN
PROFESSIONAL CORPORATION LTD
TRUST ACCOUNT
830 E. CHARLESTON BLVD. 384-3553
LAS VEGAS, NEVADA

1093

94-138
1224

11-13 1979

Pay to the order of Harry E. Claiborne $3,011.56

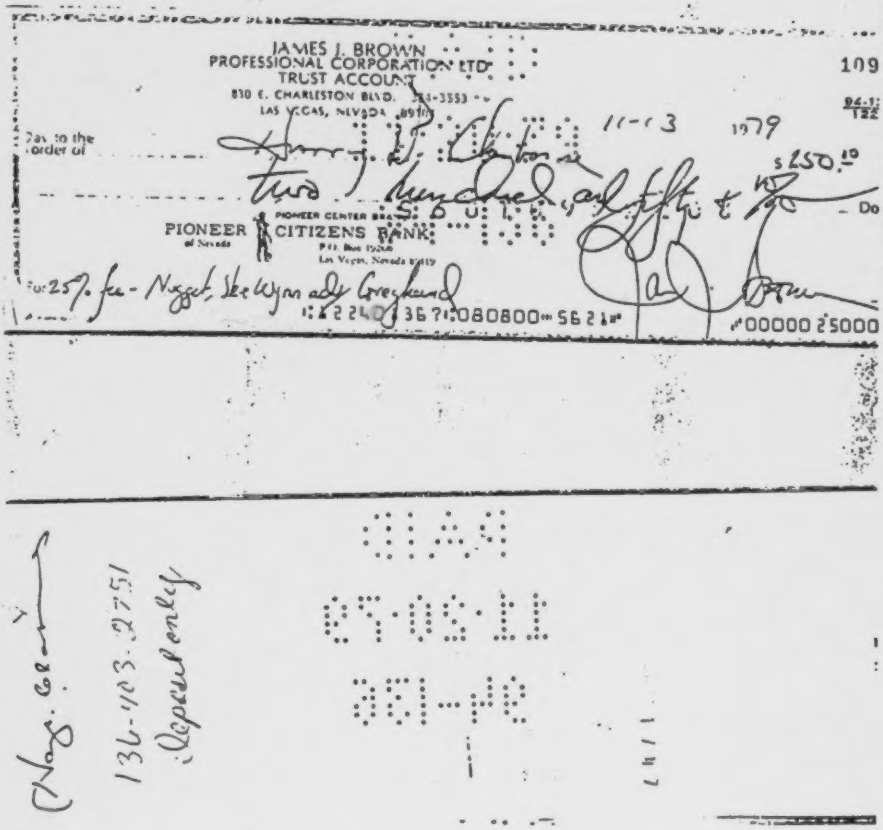
three thousand eleven and 56/00 Dollars

PIONEER CITIZENS BANK of Nevada
PIONEER CENTER BRANCH
Las Vegas, Nevada 89119

fee 1/3 of 1/3 Bertolino v. MGM

0000301156

House Exhibit #8



JAMES J. BROWN
PROFESSIONAL CORPORATION LTD
TRUST ACCOUNT
830 E. CHARLESTON BLVD. 3?4-3333
LAS VEGAS, NEVADA 8910?

109

94-1
122

11-13 1979

Pay to the order of Harry E. Claiborne $250.00

two hundred and fifty & no/100 Dollars

PIONEER of Nevada
PIONEER CENTER BRANCH
CITIZENS BANK
P.O. Box 19260
Las Vegas, Nevada 89119

For: 25% fee - Nugget, Steve Wynn and Greyhound

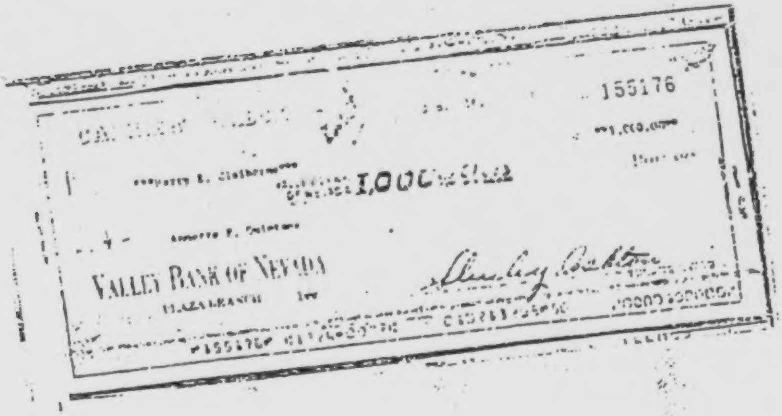
James J. Brown

⑆122400136⑆080800⑈5621⑈ ⑈0000025000⑈

136-403-2751
Deposit only

PAID
11·20·79
94-136

House Exhibit #9

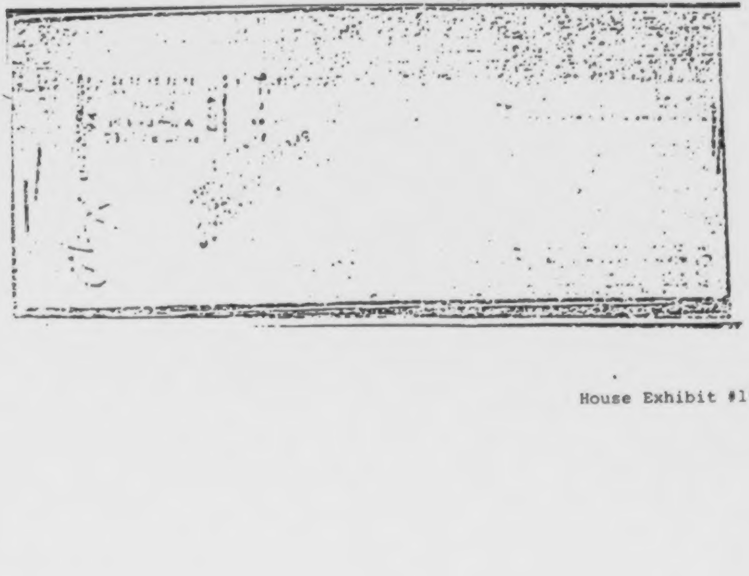


155176

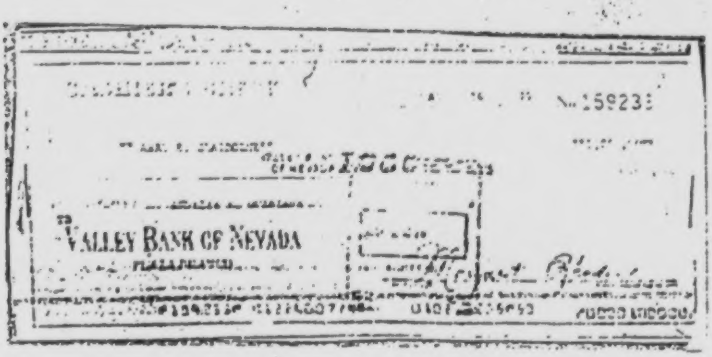
1,000

VALLEY BANK OF NEVADA

PLAZA BRANCH



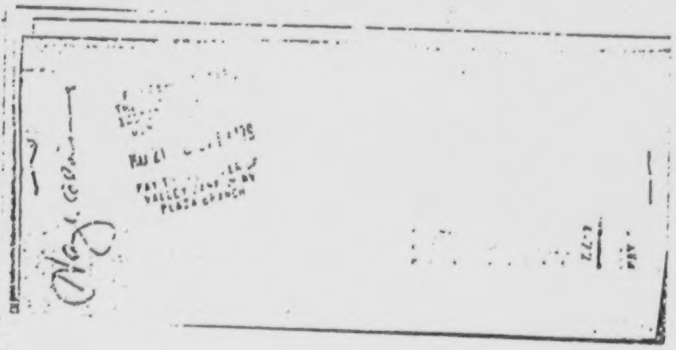
House Exhibit #10



No. 15923

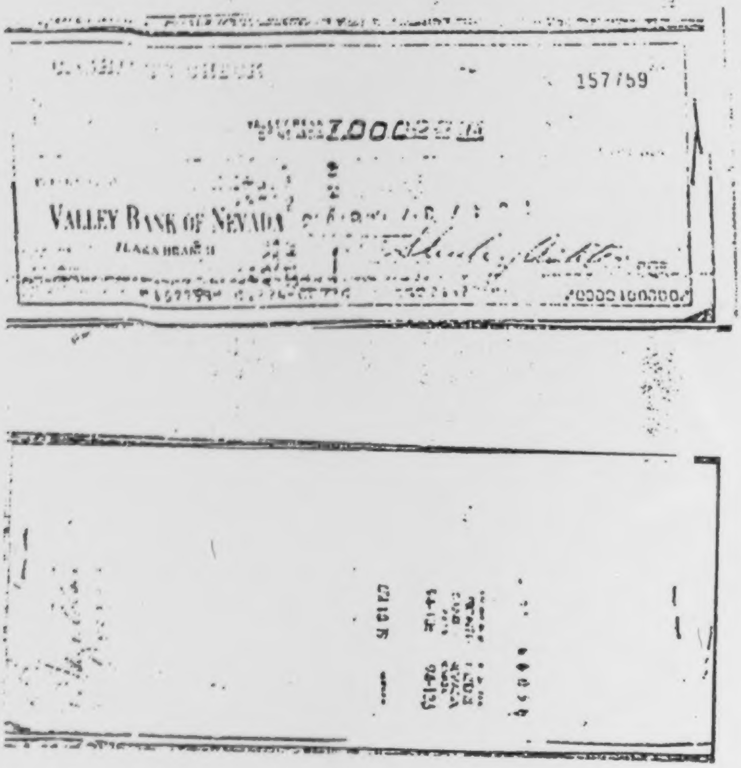
VALLEY BANK OF NEVADA

PLAZA BRANCH



PAY TO THE ORDER OF
VALLEY BANK OF NEVADA
PLAZA BRANCH

House Exhibit #11



157759

1,000

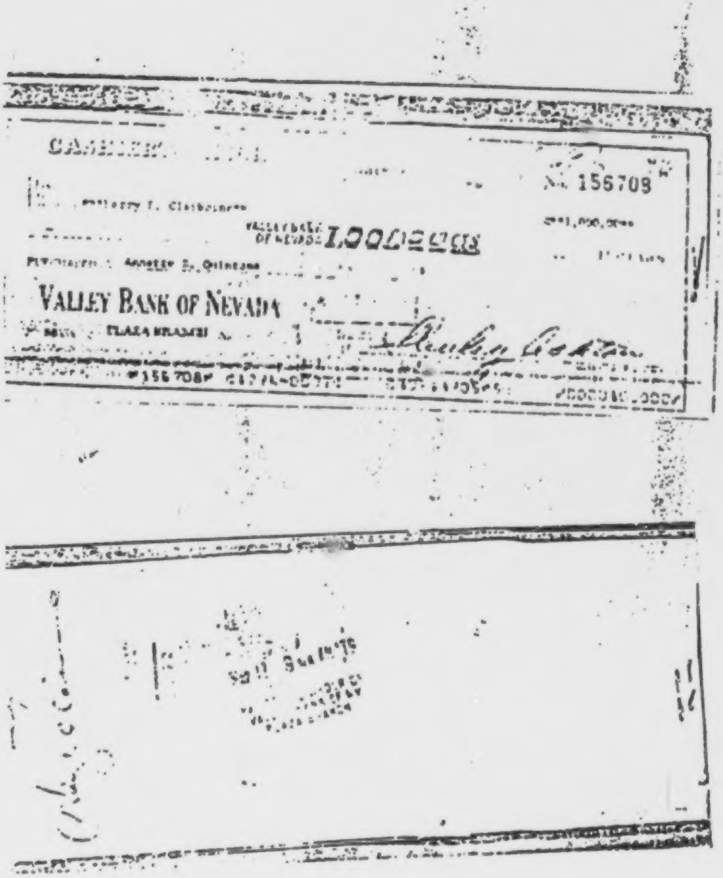
VALLEY BANK OF NEVADA

PLAZA BRANCH

⑈157759⑈

⑆0000100000⑆

House Exhibit #12



No. 156708

Harry E. Claiborne

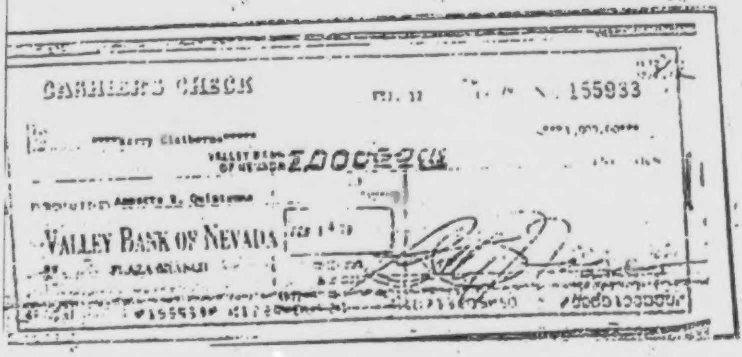
$1,000.00

Annette E. Quintana

VALLEY BANK OF NEVADA

PLAZA BRANCH

House Exhibit #13



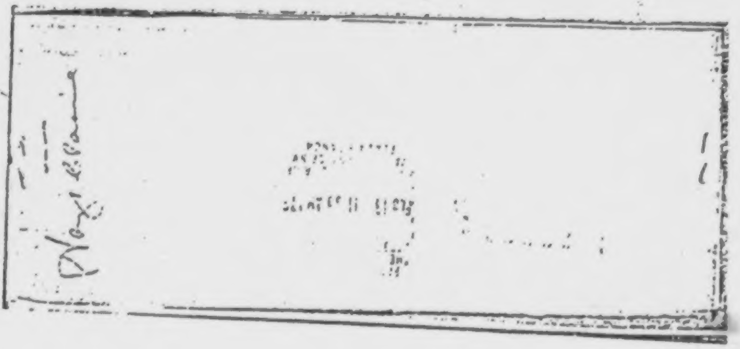
CASHIER'S CHECK

No. 155933

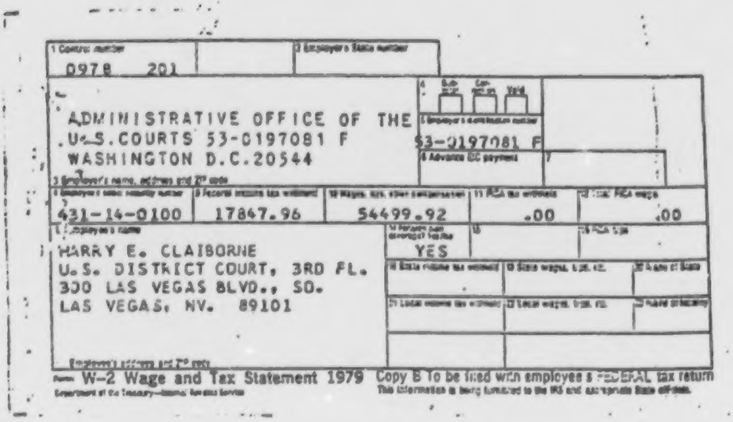
****Harry Claiborne*****

VALLEY BANK OF NEVADA

PLAZA BRANCH



House Exhibit #14



1 Control number
0978 201

2 Employer's State number

3 Employer's name, address, and ZIP code
ADMINISTRATIVE OFFICE OF THE
U.S. COURTS 53-0197081 F
WASHINGTON D.C. 20544

4 Sub-total ☐ Cor-rection ☐ Void ☐

5 Employer's identification number
53-0197081 F

6 Advance EIC payment

7

8 Employee's social security number	9 Federal income tax withheld	10 Wages, tips, other compensation	11 FICA tax withheld	12 Total FICA wages
431-14-0100	17847.96	54499.92	.00	.00

13 Employee's name
HARRY E. CLAIBORNE
U.S. DISTRICT COURT, 3RD FL.
300 LAS VEGAS BLVD., SO.
LAS VEGAS, NV. 89101
Employee's address and ZIP code

14 Pension plan coverage? Yes/No
YES

15

16 FICA tips

17 State income tax withheld

18 State wages, tips, etc.

19 Name of State

20 Local income tax withheld

21 Local wages, tips, etc.

22 Name of locality

Form W-2 Wage and Tax Statement 1979
Department of the Treasury—Internal Revenue Service

Copy B To be filed with employee's FEDERAL tax return
This information is being furnished to the IRS and appropriate State officials.

House Exhibit #15

83247280501 21

1040 U.S. Individual Income Tax Return 1979

Department of the Treasury—Internal Revenue Service

Privacy Act Notice, see page 3 of Instructions | For the year January 1–December 31, 1979, or other tax year beginning , 1979, ending , 19

Your first name and initial (if joint return, also give spouse's name and initial) HARRY E.	Last name CLAIBORNE	Your social security number 631 14 0100
Present home address (Number and street, including apartment number, or rural route) 810 PINEHURST DRIVE		Spouse's social security no.
City, town or post office, State and ZIP code LAS VEGAS, NEVADA, 89109	Your occupation ▶ U.S.DISTR.CT.JUDGE Spouse's occupation ▶	

dential tion paign Fund

Do you want $1 to go to this fund?	X Yes	No	Note: Checking "Yes" will not increase your tax or reduce your refund.
If joint return, does your spouse want $1 to go to this fund?	Yes	No	

ng Status

1 X Single

2 Married filing joint return (even if only one had income)

3 Married filing separate return. Enter spouse's social security number above and full name here ▶

4 Head of household. (See page 7 of instructions.) If qualifying person is your unmarried child, enter child's name ▶

5 Qualifying widow(er) with dependent child (Year spouse died ▶ 19). (See page 7 of instructions.)

NO. 4
ACCEPTED AS FILED
SEP 1 1980
BY CLASSIFICATION
SC 29

emptions

6a X Yourself ☐ 65 or over ☐ Blind

b ☐ Spouse ☐ 65 or over ☐ Blind

Enter number of boxes checked on 6a and b ▶ 1

c First names of your dependent children who lived with you ▶

Enter number of children listed ▶

d Other dependents: (1) Name	(2) Relationship	(3) Number of months lived in your home	(4) Did dependent have income of $1,000 or more?	(5) Did you provide more than one-half of dependent's support?

Enter number of other dependents ▶

7 Total number of exemptions claimed . . . Add numbers entered in boxes above ▶ 1

ome

8	Wages, salaries, tips, etc.	8	54,499.92
9	Interest income (attach Schedule B if over $400)	9	4,079.25
10a	Dividends (attach Schedule B if over $400) .... 10b Exclusion		
c	Subtract line 10b from line 10a	10c	
11	State and local income tax refunds (does not apply unless refund is for year you itemized deductions—see page 10 of Instructions)	11	
12	Alimony received	12	
13	Business income or (loss) (attach Schedule C)	13	21,647.87
14	Capital gain or (loss) (attach Schedule D) 061680	14	
15	Taxable part of capital gain distributions not reported on Schedule D (see page 10 of Instructions)	15	
16	Supplemental gains or (losses) (attach Form 4797)	16	
17	Fully taxable pensions and annuities not reported on Schedule E	17	
18	Pensions, annuities, rents, royalties, partnerships, estates or trusts, etc. (attach Schedule E)	18	
19	Farm income or (loss) (attach Schedule F)	19	
20a	Unemployment compensation. Total amount received		
b	Taxable part, if any, from worksheet on page 10 of Instructions	20b	
21	Other income (state nature and source—see page 10 of Instructions) ▶	21	
22	Total income. Add amounts in column for lines 8 through 21 ▶	22	80,227.04

ase attach y B of your ms W-2 here. you do not have -2, see e 5 of tructions.

ease ach check money der here.

ustments ncome

23	Moving expense (attach Form 3903 or 3903F)	23			
24	Employee business expenses (attach Form 2106)	24			
25	Payments to an IRA (see page 11 of Instructions)	25			
26	Payments to a Keogh (H.R. 10) retirement plan	26			
27	Interest penalty on early withdrawal of savings	27			
28	Alimony paid (see page 11 of Instructions)	28			
29	Disability income exclusion (attach Form 2440)	29			
30	Total adjustments. Add lines 23 through 29 ▶			30	21,000.00

RECEIVED OSC C2
JUN 17 1980
IRS Ogden

usted oss Income

31 Adjusted gross income. Subtract line 30 from line 22. If this line is less than $10,000, see page 2 of Instructions. If you want IRS to figure your tax, see page 4 of Instructions ▶ 31 59,227.04

Form 1040 (1979) HARRY E. CLAIBORNE #431-14-0100 Page 2

32	Amount from line 31 *(adjusted gross income)*			32	59,227.04
33	If you do not itemize deductions, enter zero If you itemize, complete Schedule A (Form 1040) and enter the amount from Schedule A, line 41 **Caution:** If you have unearned income and can be claimed as a dependent on your parent's return, check here ▶ ☐ and see page 12 of the Instructions. Also see page 12 of the Instructions if: • *You are married filing a separate return and your spouse itemizes deductions, OR* • *You file Form 4563, OR* • *You are a dual-status alien.*			33	3,686.91
34	Subtract line 33 from line 32. Use the amount on line 34 to find your tax from the Tax Tables, or to figure your tax on Schedule TC, Part I Use Schedule TC, Part I, and the Tax Rate Schedules ONLY if: • *Line 34 is more than $20,000 ($40,000 if you checked Filing Status Box 2 or 5), OR* • *You have more exemptions than are shown in the Tax Table for your filing status, OR* • *You use Schedule G or Form 4726 to figure your tax.* Otherwise, you MUST use the Tax Tables to find your tax.			34	55,540.13
35	Tax. Enter tax here and check if from ☐ Tax Tables or ☐ Schedule TC			35	19,912.07
36	Additional taxes. (See page 12 of Instructions.) Enter here and check if from ☐ Form 4970, ☐ Form 4972, ☐ Form 5544, ☐ Form 5405, or ☐ Section 72(m)(5) penalty tax			36	
37	Total. Add lines 35 and 36 ▶			37	19,912.07
38	Credit for contributions to candidates for public office	38			
39	Credit for the elderly *(attach Schedules R&RP)*	39			
40	Credit for child and dependent care expenses *(attach Form 2441)*	40			
41	Investment credit *(attach Form 3468)*	41			
42	Foreign tax credit *(attach Form 1116)*	42			
43	Work incentive (WIN) credit *(attach Form 4874)*	43			
44	Jobs credit *(attach Form 5884)*	44			
45	Residential energy credits *(attach Form 5695)*	45			
46	Total credits. Add lines 38 through 45			46	
47	Balance. Subtract line 46 from line 37 and enter difference (but not less than zero) ▶			47	19,912.07
48	Self-employment tax *(attach Schedule SE)*			48	1,753.48
49a	Minimum tax. Attach Form 4625 and check here ▶ ☐			49a	
49b	Alternative minimum tax. Attach Form 6251 and check here ▶ ☐			49b	
50	Tax from recomputing prior-year investment credit *(attach Form 4255)*			50	
51a	Social security (FICA) tax on tip income not reported to employer *(attach Form 4137)*			51a	
51b	Uncollected employee FICA and RRTA tax on tips *(from Form W–2)*			51b	
52	Tax on an IRA *(attach Form 5329)*			52	
53	Advance earned income credit payments received *(from Form W–2)*			53	
54	Total. Add lines 47 through 53 ▶			54	21,665.55
55	Total Federal income tax withheld	55	17,847.96		
56	1979 estimated tax payments and credit from 1978 return	56			
57	Earned income credit. If line 32 is under $10,000, see page 2 of Instructions	57			
58	Amount paid with Form 4868	58	8,000.00		
59	Excess FICA and RRTA tax withheld (two or more employers)	59			
60	Credit for Federal tax on special fuels and oils *(attach Form 4136 or 4136–T)*	60			
61	Regulated Investment Company credit *(attach Form 2439)*	61			
62	Total. Add lines 55 through 61 ▶			62	25,847.96
63	If line 62 is larger than line 54, enter amount **OVERPAID** ▶			63	4,182.41
64	Amount of line 63 to be **REFUNDED TO YOU** ▶			64	
65	Amount of line 63 to be credited on 1980 estimated tax ▶	65	4,182.41		
66	If line 54 is larger than line 62, enter BALANCE DUE. Attach check or money order for full amount payable to "Internal Revenue Service." Write your social security number on check or money order ▶ (Check ▶ ☐ if Form 2210 (2210F) is attached. See page 15 of Instructions.) ▶ $			66	

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

▶ Harry E. Claiborne
Your signature Date ▶ Spouse's signature (if filing jointly, BOTH must sign even if only one had income)

Paid Preparer's Information

Preparer's signature and date ▶ Joseph C. Wright

Check if self-employed ▶ ☒ Preparer's social security no. 457 26 0373

Firm's name (or yours, if self-employed) and address ▶ JOSEPH C. WRIGHT-PUBLIC ACCOUNTANT
1209 So. Commerce St., Las Vegas, Nev.

E.I. No. ▶ 86 00[illegible]
ZIP code ▶ [illegible]

:edules A&B—Itemized Deductions AND Interest and Dividend Income

1979

1040)

nt of the Treasury
Revenue Service

▶ Attach to Form 1040. ▶ See Instructions for Schedules A and B (Form 1040).

08

s) as shown on Form 1040
Y E. CLAIBORNE

Your social security number
431 14 0100

Schedule A—Itemized Deductions (Schedule B is on back)

al and) Dental, Expenses (not paid or reimbursed by
ance or otherwise) (See page 16 of Instructions.)

e-half (but not more than $150) of in-ance premiums you paid for medical re. (Be sure to include in line 10 below.) . ▶	109	45
ec cine and drugs		
ter 1% of Form 1040, line 31 . . .		
ubtract line 3 from line 2. If line 3 is ore than line 2, enter zero		
alance of insurance premiums for medi-l care not entered on line 1	109	45
her medical and dental expenses:		
Doctors, dentists, nurses, etc. . . .	659	50
Hospitals	1834	89
Other (itemize—include hearing aids, dentures, eyeglasses, transportation, etc.) ▶		
otal (add lines 4 through 6c)	2603	84
nter 3% of Form 1040, line 31 . . .	1776	81
ubtract line 8 from line 7. If line 8 is ore than line 7, enter zero	827	03
otal medical and dental expenses (add nes 1 and 9). Enter here and on line 33 . ▶	936	48

es (See page 16 of instructions.)
: Gasoline taxes are no longer deductible.

tate and local income		
eal estate	3663	43
eneral sales (see sales tax tables) . .	367	00
ersonal property	260	00
ther (itemize) ▶		
otal taxes (add lines 11 through 15). nter here and on line 34 . . . . ▶	4290	43

est Expense (See page 17 of instructions.)

ome mortgage		
redit and charge cards		
ther (itemize) ▶		
otal interest expense (add lines 17 through 19). Enter here and on line 35 ▶		

Contributions (See page 17 of instructions.)

21 a Cash contributions for which you have receipts, cancelled checks, or other written evidence	525	00
b Other cash contributions (show to whom you gave and how much you gave) ▶		
22 Other than cash (see page 17 of instructions for required statement)		
23 Carryover from prior years		
24 Total contributions (add lines 21a through 23). Enter here and on line 36 . . ▶	525	00

Casualty or Theft Loss(es) (See page 18 of instructions.)

25 Loss before insurance reimbursement .		
26 Insurance reimbursement		
27 Subtract line 26 from line 25. If line 26 is more than line 25, enter zero . . .		
28 Enter $100 or amount from line 27, whichever is smaller		
29 Total casualty or theft loss(es) (subtract line 28 from line 27). Enter here and on line 37 . ▶		

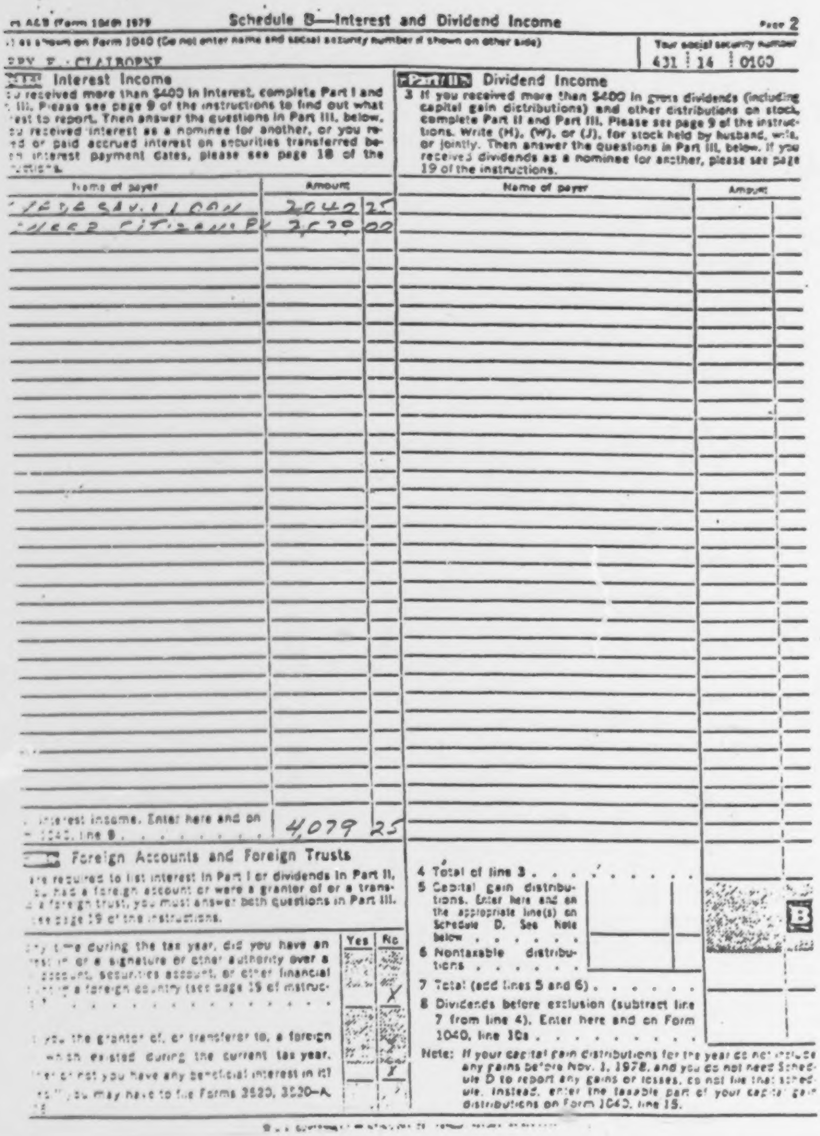
Miscellaneous Deductions (See page 18 of instructions.)

30 Union dues		
31 Other (itemize) ▶		
BAR ASSN. DUES	175	00
JUDICIAL CONFERENCE	60	00
32 Total miscellaneous deductions (add lines 30 and 31). Enter here and on line 38 ▶	235	00

Summary of Itemized Deductions
(See page 18 of instructions.)

A

33 Total medical and dental—from line 10 .	936	48
34 Total taxes—from line 16	4290	43
35 Total interest—from line 20		—
36 Total contributions—from line 24 . . .	525	00
37 Total casualty or theft loss(es)—from line 29 .		—
38 Total miscellaneous—from line 32 . .	235	00
39 Add lines 33 through 38	5986	91
40 If you checked Form 1040, Filing Status box: 2 or 5, enter $3,400 . . . . 1 or 4, enter $2,300 . . . . 3, enter $1,700	2300	00
41 Subtract line 40 from line 39. Enter here and on Form 1040, line 33. (If line 40 is more than line 39, see the instructions for line 41 on page 18.) . . . . . ▶	3,686	91



es A&B (Form 1040) 1979

Schedule B—Interest and Dividend Income

Page 2

e as shown on Form 1040 (Do not enter name and social security number if shown on other side)

RRY E. CLAIBORNE

Your social security number 431 14 0100

Part I Interest Income

u received more than $400 in interest, complete Part I and III. Please see page 9 of the instructions to find out what rest to report. Then answer the questions in Part III, below. ou received interest as a nominee for another, or you red or paid accrued interest on securities transferred been interest payment dates, please see page 18 of the uctions.

Name of payer	Amount	
FEDE SAV. & LOAN	2042	25
NEER CITIZENS B	2,037	00
interest income. Enter here and on 1040, line 9	4,079	25

Part II Dividend Income

3 If you received more than $400 in gross dividends (including capital gain distributions) and other distributions on stock, complete Part II and Part III. Please see page 9 of the instructions. Write (H), (W), or (J), for stock held by husband, wife, or jointly. Then answer the questions in Part III, below. If you received dividends as a nominee for another, please see page 19 of the instructions.

Name of payer	Amount

4 Total of line 3

5 Capital gain distributions. Enter here and on the appropriate line(s) on Schedule D. See Note below

6 Nontaxable distributions

7 Total (add lines 5 and 6)

8 Dividends before exclusion (subtract line 7 from line 4). Enter here and on Form 1040, line 10a

Note: If your capital gain distributions for the year do not include any gains before Nov. 1, 1978, and you do not need Schedule D to report any gains or losses, do not file that schedule. Instead, enter the taxable part of your capital gain distributions on Form 1040, line 15.

B

Part III Foreign Accounts and Foreign Trusts

are required to list interest in Part I or dividends in Part II, ou had a foreign account or were a grantor of or a transa foreign trust, you must answer both questions in Part III. see page 19 of the instructions.

	Yes	No
y time during the tax year, did you have an rest in or a signature or other authority over a account, securities account, or other financial nt in a foreign country (see page 19 of instructions)?		X
you the grantor of, or transferor to, a foreign which existed during the current tax year, ther or not you have any beneficial interest in it? es," you may have to file Forms 3520, 3520-A, 6		X

HEDULE C
rm 1040)
Department of the Treasury
Internal Revenue Service

Profit or (Loss) From Business or Profession

(Sole Proprietorship)

Partnerships, Joint Ventures, etc., Must File Form 1065. 8111

▶ Attach to Form 1040 or Form 1041. ▶ See Instructions for Schedule C (Form 1040).

1979
09

e of proprietor: ARRY E. CLAIBORNE

Social security number of proprietor: 431 14 0100

ain business activity (see Instructions) ▶ LAWYER ; product ▶ SERVICE

Business name ▶ HARRY E. CLAIBORNE ATTORNEY AT LAW

C Employer identification number: 88 0055874

Business address (number and street) ▶ 325 So. 3rd ST.

City, State and Zip Code ▶ LAS VEGAS, NEV. 89101

Accounting method: (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify) ▶

Method(s) used to value closing inventory:

(1) ☐ Cost (2) ☐ Lower of cost or market (3) ☐ Other (if other, attach explanation) N/A

	Yes	No
Was there any major change in determining quantities, costs, or valuations between opening and closing inventory? If "Yes," attach explanation.		
Did you deduct expenses for an office in your home?		X
Did you elect to claim amortization (under section 191) or depreciation (under section 167(o)) for a rehabilitated certified historic structure (see Instructions)?		X
Amortizable basis (see Instructions) ▶		

X3

Income

a Gross receipts or sales	1a	22,332	87
b Returns and allowances	1b		
c Balance (subtract line 1b from line 1a)	1c	22,332	87
Cost of goods sold and/or operations (Schedule C-1, line 8)	2		
Gross profit (subtract line 2 from line 1c)	3	22,332	87
Other income (attach schedule)	4		
Total income (add lines 3 and 4) ▶	5	22,332	87

Deductions

Advertising			31 a Wages		
Amortization			b Jobs credit		
Bad debts from sales or services			c WIN credit		
Bank charges			d Total credits		
Car and truck expenses			e Subtract line 31d from 31a		
Commissions			32 Other expenses (specify):		
Depletion			a		
Depreciation (explain in Schedule C-2)			b		
Dues and publications			c INCOME & EXPENSE		
Employee benefit programs			d ON THIS SCHEDULE		
Freight (not included on Schedule C-1)			e ARE FROM MY PRIOR		
Insurance			f PRACTICE, BUT NOT		
Interest on business indebtedness			g RECEIVED OR PAID		
Laundry and cleaning			h UNTIL 1979.		
Legal and professional services			i		
Office supplies			j		
Pension and profit-sharing plans			k		
Postage			l		
Rent on business property			m		
Repairs & MAINTENANCE	285	00	n		
Supplies (not included on Schedule C-1)	400	00	o		
Taxes			p		
Telephone			q		
Travel and entertainment			r		
Utilities			s		

Total deductions (add amounts in columns for lines 6 through 32s) ▶	33	685	00
Net profit or (loss) (subtract line 33 from line 5). If a profit, enter on Form 1040, line 13, and on Schedule SE, Part I, line 5a (or Form 1041, line 6). If a loss, go on to line 35	34	21,647	87

If you have a loss, do you have amounts for which you are not "at risk" in this business (see Instructions)? ☐ Yes ☒ No

HEDULE SE
rm 1040)

Computation of Social Security Self-Employment Tax

▶ See Instructions for Schedule SE (Form 1040).
▶ Attach to Form 1040.

1979
14

of self-employed person (as shown on social security card) ARRY E. CLAIBORNE	HE	Social security number of self-employed person ▶	431 | 14 | 0100	

Computation of Net Earnings from FARM Self-employment

gular Method			
Net profit or (loss) from:			
a Schedule F (Form 1040)	1a		
b Farm partnerships	1b		
Net earnings from farm self-employment (add lines 1a and 1b)	2		
m Optional Method			
If gross profits from farming are: a Not more than $2,400, enter two-thirds of the gross profits b More than $2,400 and the net farm profit is less than $1,600, enter $1,600	3		
Enter here and on line 12a, the amount on line 2, or line 3 if you elect the farm optional method	4		

Computation of Net Earnings from NONFARM Self-employment

SE

gular Method			
Net profit or (loss) from:			
a Schedule C (Form 1040)	5a	21,647	87
b Partnerships, joint ventures, etc. (other than farming)	5b		
c Service as a minister, member of a religious order, or a Christian Science practitioner. (Include rental value of parsonage or rental allowance furnished.) If you filed Form 4361 and have not revoked that exemption, check here ▶ ☐ and enter zero on this line	5c		
d Service with a foreign government or international organization	5d		
e Other (specify) ▶	5e		
Total (add lines 5a through 5e)	6	21,647	87
Enter adjustments if any (attach statement, see page 29 of Instructions)	7		
Adjusted net earnings or (loss) from nonfarm self-employment (line 6, as adjusted by line 7)	8	21,647	87
Note: *If line 8 is $1,600 or more or if you do not elect to use the Nonfarm Optional Method, skip lines 9 through 11 and enter amount from line 8 on line 12b, Part III.*			
farm Optional Method			
a Maximum amount reportable under both optional methods combined (farm and nonfarm)	9a	$1,600	00
b Enter amount from line 3. (If you did not elect to use the farm optional method, enter zero.)	9b		
c Balance (subtract line 9b from line 9a)	9c		
Enter two-thirds of gross nonfarm profits or $1,600, whichever is smaller	10		
Enter here and on line 12b, the amount on line 9c or line 10, whichever is smaller	11		

Computation of Social Security Self-employment Tax

Net earnings or (loss):			
a From farming (from line 4)	12a		
b From nonfarm (from line 8, or line 11 if you elect to use the Nonfarm Optional Method)	12b	21,647	87
Total net earnings or (loss) from self-employment reported on lines 12a and 12b. (If line 13 is less than $400, you are not subject to self-employment tax. Do not fill in rest of schedule)	13	21,647	87
The largest amount of combined wages and self-employment earnings subject to social security or railroad retirement taxes for 1979 is	14	$22,900	00
a Total "FICA" wages (from Forms W-2) and "RRTA" compensation | 15a | —			
b Unreported tips subject to FICA tax from Form 4137, line 9 or to RRTA | 15b | —			
c Add lines 15a and 15b	15c		—
Balance (subtract line 15c from line 14)	16	22,900	00
Self-employment income—line 13 or 16, whichever is smaller	17	21,647	87
Self-employment tax. (If line 17 is $22,900, enter $1,854.90; if less, multiply the amount on line 17 by .081.) Enter here and on Form 1040, line 48	18	1,753	48

4726
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nal Revenue Service

Maximum Tax on Personal Service Income

▶ See instructions on back.
▶ Attach to Form 1040 (or Form 1041).

1979
26

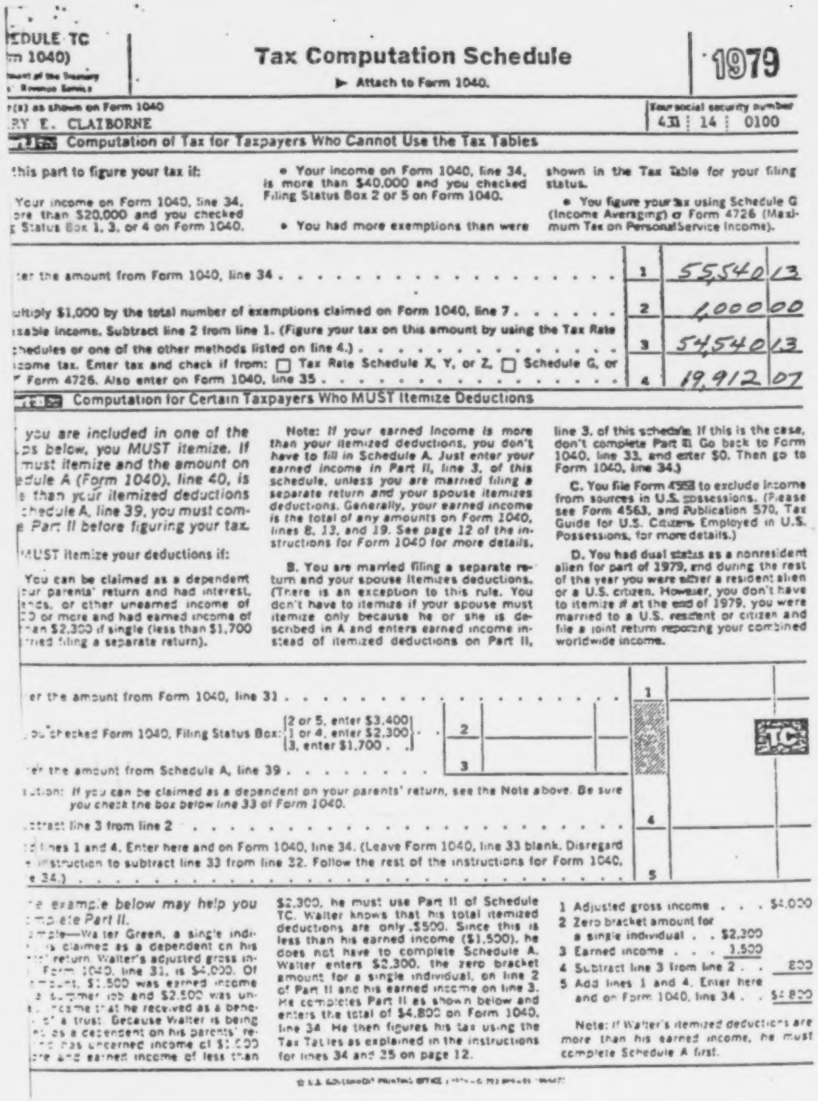
me(s) as shown on Form 1040 (or Form 1041): RRY E. CLAIBORNE
Identifying number: 431-14-0100

not complete this form if—(a) Taxable income or personal service taxable income is:
$41,500 or less, and on Form 1040, you checked box 1,
$60,000 or less, and on Form 1040, you checked box 2 or box 5,
$44,700 or less, and on Form 1040, you checked box 4,
$28,300 or less, and this is an Estate or Trust return (Form 1041);
(b) You elected income averaging; or
(c) On Form 1040, you checked box 3.

Personal Service Income			Deductions Against Personal Service Income		
	76147	79			
Total personal service income 1	76147	79	2 Total deductions against personal service income 2		

Personal service net income—Subtract total of line 2 from total of line 1	3	76147	79
Enter your adjusted gross income	4	59227	04
Divide the amount on line 3 by the amount on line 4. Enter result as a percentage. If more than 100%, enter 100%. Round to nearest 4 numbers	5	100	%
Enter your taxable income	6	54540	13
Multiply the amount on line 6 by the percentage on line 5	7	54540	13
Enter the total of your 1979 tax preference items	8		-0-
Personal service taxable income. Subtract line 8 from line 7	9	54540	13
on Form 1040, you checked box 1, enter $41,500 . . . . on Form 1040, you checked box 2 or box 5, enter $60,000 . . . . on Form 1040, you checked box 4, enter $44,700 . . . . you are filing Form 1041, enter $28,300	10	41500	00
Subtract line 10 from line 9. If line 10 is more than line 9, do not complete rest of form	11	13040	13
Enter 50% of line 11	12	6520	07
Tax on amount on line 6* 13 20564 07			
Tax on amount on line 9* 14 20564 07			
Subtract line 14 from line 13	15		-0-
the amount on line 10 is: $41,500, enter $13,392 . . . . $60,000, enter $19,678 . . . . $44,700, enter $13,961 . . . . $28,300, enter $5,839	16	13392	00
Add lines 12, 15, and 16. This is your maximum tax	17	19912	07

* Tax Rate Schedules from Form 1040 or Form 1041 instructions.



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m 1040)
ment of the Treasury
Revenue Service

Tax Computation Schedule

▶ Attach to Form 1040.

1979

(s) as shown on Form 1040: RY E. CLAIBORNE

Your social security number: 431 | 14 | 0100

Computation of Tax for Taxpayers Who Cannot Use the Tax Tables

this part to figure your tax if:

Your income on Form 1040, line 34, ore than $20,000 and you checked Status Box 1, 3, or 4 on Form 1040.

- Your income on Form 1040, line 34, is more than $40,000 and you checked Filing Status Box 2 or 5 on Form 1040.
- You had more exemptions than were shown in the Tax Table for your filing status.
- You figure your tax using Schedule G (Income Averaging) or Form 4726 (Maximum Tax on Personal Service Income).

ter the amount from Form 1040, line 34	1	55,540	13
ultiply $1,000 by the total number of exemptions claimed on Form 1040, line 7	2	1,000	00
xable income. Subtract line 2 from line 1. (Figure your tax on this amount by using the Tax Rate chedules or one of the other methods listed on line 4.)	3	54,540	13
come tax. Enter tax and check if from: ☐ Tax Rate Schedule X, Y, or Z, ☐ Schedule G, or Form 4726. Also enter on Form 1040, line 35	4	19,912	07

Computation for Certain Taxpayers Who MUST Itemize Deductions

you are included in one of the ps below, you MUST itemize. If must itemize and the amount on edule A (Form 1040), line 40, is than your itemized deductions chedule A, line 39, you must com- Part II before figuring your tax.

MUST itemize your deductions if:

You can be claimed as a dependent ur parents' return and had interest, ends, or other unearned income of 0 or more and had earned income of an $2,300 if single (less than $1,700 rried filing a separate return).

Note: *If your earned income is more than your itemized deductions, you don't have to fill in Schedule A. Just enter your earned income in Part II, line 3, of this schedule, unless you are married filing a separate return and your spouse itemizes deductions. Generally, your earned income is the total of any amounts on Form 1040, lines 8, 13, and 19. See page 12 of the instructions for Form 1040 for more details.*

B. You are married filing a separate return and your spouse itemizes deductions. (There is an exception to this rule. You don't have to itemize if your spouse must itemize only because he or she is described in A and enters earned income instead of itemized deductions on Part II, line 3, of this schedule. If this is the case, don't complete Part II. Go back to Form 1040, line 33, and enter $0. Then go to Form 1040, line 34.)

C. You file Form 4563 to exclude income from sources in U.S. possessions. (Please see Form 4563, and Publication 570, Tax Guide for U.S. Citizens Employed in U.S. Possessions, for more details.)

D. You had dual status as a nonresident alien for part of 1979, and during the rest of the year you were either a resident alien or a U.S. citizen. However, you don't have to itemize if at the end of 1979, you were married to a U.S. resident or citizen and file a joint return reporting your combined worldwide income.

er the amount from Form 1040, line 31			1		
ou checked Form 1040, Filing Status Box: {2 or 5, enter $3,400 / 1 or 4, enter $2,300 / 3, enter $1,700}	2				
er the amount from Schedule A, line 39	3				
ution: *If you can be claimed as a dependent on your parents' return, see the Note above. Be sure you check the box below line 33 of Form 1040.*					
btract line 3 from line 2			4		
d lines 1 and 4. Enter here and on Form 1040, line 34. (Leave Form 1040, line 33 blank. Disregard e instruction to subtract line 33 from line 22. Follow the rest of the instructions for Form 1040, e 34.)			5		

TC

e example below may help you mplete Part II.

mple—Walter Green, a single indi- is claimed as a dependent on his return. Walter's adjusted gross in- Form 1040, line 31, is $4,000. Of mount, $1,500 was earned income summer job and $2,500 was un- ncome that he received as a bene- of a trust. Because Walter is being as a dependent on his parents' re- has unearned income of $1,000 re and earned income of less than $2,300, he must use Part II of Schedule TC. Walter knows that his total itemized deductions are only $500. Since this is less than his earned income ($1,500), he does not have to complete Schedule A. Walter enters $2,300, the zero bracket amount for a single individual, on line 2 of Part II and his earned income on line 3. He completes Part II as shown below and enters the total of $4,800 on Form 1040, line 34. He then figures his tax using the Tax Tables as explained in the instructions for lines 34 and 35 on page 12.

1	Adjusted gross income		$4,000
2	Zero bracket amount for a single individual	$2,300	
3	Earned income	1,500	
4	Subtract line 3 from line 2		800
5	Add lines 1 and 4. Enter here and on Form 1040, line 34		$4,800

Note: *If Walter's itemized deductions are more than his earned income, he must complete Schedule A first.*

☆ U.S. GOVERNMENT PRINTING OFFICE : [illegible]

Form **4868**
Department of the Treasury
Internal Revenue Service

Application for Automatic Extension of Time to File U.S. Individual Income Tax Return

1979

Note: *File this form with the Internal Revenue Service Center where you must file your income tax return and pay the amount shown on line 6 below. This is not an extension of time for payment of tax. The law requires that a penalty be charged for late payment of tax unless you show reasonable cause for not paying the tax when due (See Instruction G.).*

Please Print or Type

Name (If joint return, give first names and initials of both) HARRY E.	Last name CLAIBORNE	Your social security number 431 ¦ 14 ¦ 0100
Present home address (Number and street, including apartment number, or rural route) 810 PINEHURST DRIVE		Spouse's social security no. ¦ ¦
City, town or post office, State, and ZIP code LAS VEGAS, NEVADA, 89109		

An automatic 2-month extension of time until June 15, 1980, is requested in which to file Form 1040 for the calendar year 1979 (or if a fiscal year return until ________________ 19____, for the tax year beginning ________________, 1979, and ending ________________, 1980).

1 Total tax you expect to owe for 1979 (see instruction E)		25,847.96
2 Federal income tax withheld	17,847.96	
3 1979 estimated tax payments (include 1978 overpayment allowed as a credit)		
4 Other payments (see instruction E)		
5 Total (add lines 2, 3, and 4)		17,847.96
6 BALANCE DUE (subtract line 5 from line 1). Pay in full with this form ▶		8,000.00

Signature and Verification

If Prepared by Taxpayer.—Under penalties of perjury, I declare that I have examined this form, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete.

Your signature ________________ Date ________________

Spouse's signature (if filing jointly, BOTH must sign even if only one had income) ________________ Date ________________

If Prepared by Someone Other Than Taxpayer.—Under penalties of perjury, I declare that I have examined this form, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete, that I am authorized to prepare this form, and that I am:

- ☐ A member in good standing of the bar of the highest court of (specify jurisdiction) ________________
- ☐ A certified public accountant qualified to practice in (specify jurisdiction) ________________
- ☐ A person enrolled to practice before the Internal Revenue Service.
- ☐ An authorized agent holding a power of attorney. (The power of attorney need not be submitted unless requested.)
- ☐ A person in close personal or business relationship to the taxpayer who cannot sign this form because of illness, absence, or other good cause. My relationship to the taxpayer and the reasons why the taxpayer cannot sign this form are ________________

Joseph I Wright
Signature of preparer other than taxpayer

4/11/80
Date

See instructions on back.

(Please Print)

HARRY E. CLAIBORNE

810 PINEHURST DRIVE

LAS VEGAS, NEVADA, 89109

Form 1040
88

LAS VEGAS
16 JUN
1980

Internal Revenue Service Center
Ogden, UT 84201

[illegible] ... CERTAIN JUDICIAL EMPLOYEES PER [illegible]

[illegible] LAST NAME, FIRST, MIDDLE INITIAL Claiborne, Harry E.	COURT OR ORGANIZATION United States District Court	REPORT DATE 5/15/80
[illegible] United States District Judge	PERSON REPORTING ☒ FULL TIME OFFICERS & EMPLOYEES [illegible] WHITE FORM. ☐ PART TIME OFFICERS [illegible] FORM.	[illegible]
[illegible] OFFICE ADDRESS 300 Las Vegas Blvd. South, Las Vegas, Nevada 89101		
[illegible] ☐ ☒ [illegible]	[illegible]	DO NOT WRITE IN THIS SPACE

Note. Please read instructions carefully. Sign this form on the reverse side. Attach additional sheets if needed, [illegible] each sheet by showing your name and the section being continued. Complete all parts. (IF NONE, SO INDICATE.) Please type or print clearly.

I. A. NON-INVESTMENT INCOME

[illegible] other than salary from the United States Government, which you received [illegible] EXCLUDE: (a) any income of child, (b) amounts aggregating under $100 [illegible]

SOURCE [illegible] DATE RECEIVED	TYPE	AMOUNT
Clients' fees while in private practice		23,050.76
Sale of airplane		11,000.00

I. B. INVESTMENT INCOME

[illegible] EXCLUDE: [illegible] Category 1 [illegible] $1,000, 2 — $1,000-$2,500, 3 — [illegible] $5,000, 4 — [illegible] $15,000, 5 — $15,000-[illegible], 6 — [illegible], 7 — over [illegible]

II. HOLDINGS

The identity and category of value of any interest in property held during the preceding calendar year in a trade or business, or for investment or the production of income (i.e., business interests, stocks and bonds, real estate, savings accounts and any other investment or income producing property including trust holdings), which has a fair market value exceeding $1,000 as of the end of the year. If holding was sold, indicate on form that it was sold and not held at end of year. EXCLUDE: (a) items under $5,000 which are personal savings deposits in banks and similar institutions, (b) [illegible] relatives, (c) in spouse's or child's holdings about which you have no knowledge, responsibility, nor past, present or future financial interest or economic benefit. Note: For this part, indicate Category of Value as follows: Category A — not more than $5,000, B — $5,000-$15,000, C — $15,000-$50,000, D — $50,000-$100,000, E — $100,000-$250,000, F — over $250,000.

(VALUE OF INCOME)		SOURCE OF INCOME OR IDENTITY OF HOLDING	(VALUE OF HOLDING)	
TYPE	CATEGORY OF VALUE		VALUATION OPTION	CATEGORY OF VALUE
Interest	2	Savings Acct., Nevada Savings and Loan, Las Vegas Nevada	D	C
Interest	2	TCD, Pioneer Citizens Bank, Las Vegas, Nevada	D	D

MAY 17 1980

House Exhibit #16

[illegible] Ethics Committee

III. GIFTS AND REIMBURSEMENTS

EXCLUDE: Any items valued under $35; gifts from relatives; inheritances; mementos/honors; gifts to spouse or child independent of relationship to you.

A. The source and a brief description of gifts of transportation, lodging, food, or entertainment aggregating $250 or more in value received from any source during the preceding calendar year. *EXCLUDE:* Personal hospitality; gifts from U.S. government; gifts from foreign government (to that country).

SOURCE	BRIEF DESCRIPTION
None	

B. The source, a brief description, and value of all other gifts aggregating $100 or more in value received from any source during the preceding calendar year.

SOURCE	BRIEF DESCRIPTION	VALUE

C. The source and a brief description of reimbursements aggregating $250 or more in value received from any source except U.S. government during the preceding calendar year.

SOURCE	BRIEF DESCRIPTION

NOTE: For Parts IV and V below, indicate Categories of Value, as follows: Category A — not more than $5,000; B — $5,001-$15,000; C — $15,001-$50,000; D — $50,001-$100,000; E — $100,001-$250,000; F — over $250,000.

IV. LIABILITIES

The identity and category of value of the total liabilities owed to any creditor which exceeds $10,000 at any time during the preceding calendar year, [illegible]. *EXCLUDE:* (a) loans secured by mortgage on residence of person reporting or of spouse; (b) loans secured by personal motor vehicles, household furniture or appliances (if loan did not exceed purchase price of item); (c) a spouse's or child's liabilities about which you have no knowledge, responsibility, nor past, present or future financial interest or economic benefit; (d) loans from relatives.

IDENTITY	CATEGORY OF VALUE
None	

V. TRANSACTIONS

A brief description, the date, and category of value of any purchase, sale or exchange during the preceding calendar year which exceeds $1,000 in real property or in stocks, bonds, commodities futures, or other forms of securities. *EXCLUDE:* (a) transactions by and between reporting person and spouse or dependent child; (b) transactions affecting those personal residences; (c) a spouse's or dependent child's transactions about which you have no knowledge, responsibility, nor past, present or future financial interest or economic benefit.

BRIEF DESCRIPTION	DATE	CATEGORY OF VALUE
None		

VI. POSITIONS

The identity of all positions held on or before the date of filing during the current calendar year as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution. *EXCLUDE:* positions in any religious, social, fraternal or political entity, and positions solely of an honorary nature.

POSITION	NAME OF ORGANIZATION
None	

VII. AGREEMENTS

A description of the date, parties to, and terms of any agreement or arrangement currently in effect with respect to future employment, leave of absence during period of U.S. government service, continuation of payments by a former employer other than the U.S. Government, and continuing participation in an employee welfare or benefit plan maintained by a former employer.

DATES	PARTIES	TERMS

FOR PART-TIME OFFICERS: HAVE THERE BEEN ANY OCCASIONS IN WHICH THE PERFORMANCE OF YOUR DUTIES PRODUCED A CONFLICT OF INTEREST? ☐ YES ☐ NO

NOTE: Any individual who knowingly and willfully falsifies, or who knowingly and willfully fails to file this report may be subject to civil & criminal sanctions (28 U.S.C. App. I, §304 & 18 U.S.C. §1001)

SIGNATURE [illegible]

DATE 5-14-80

Jay:

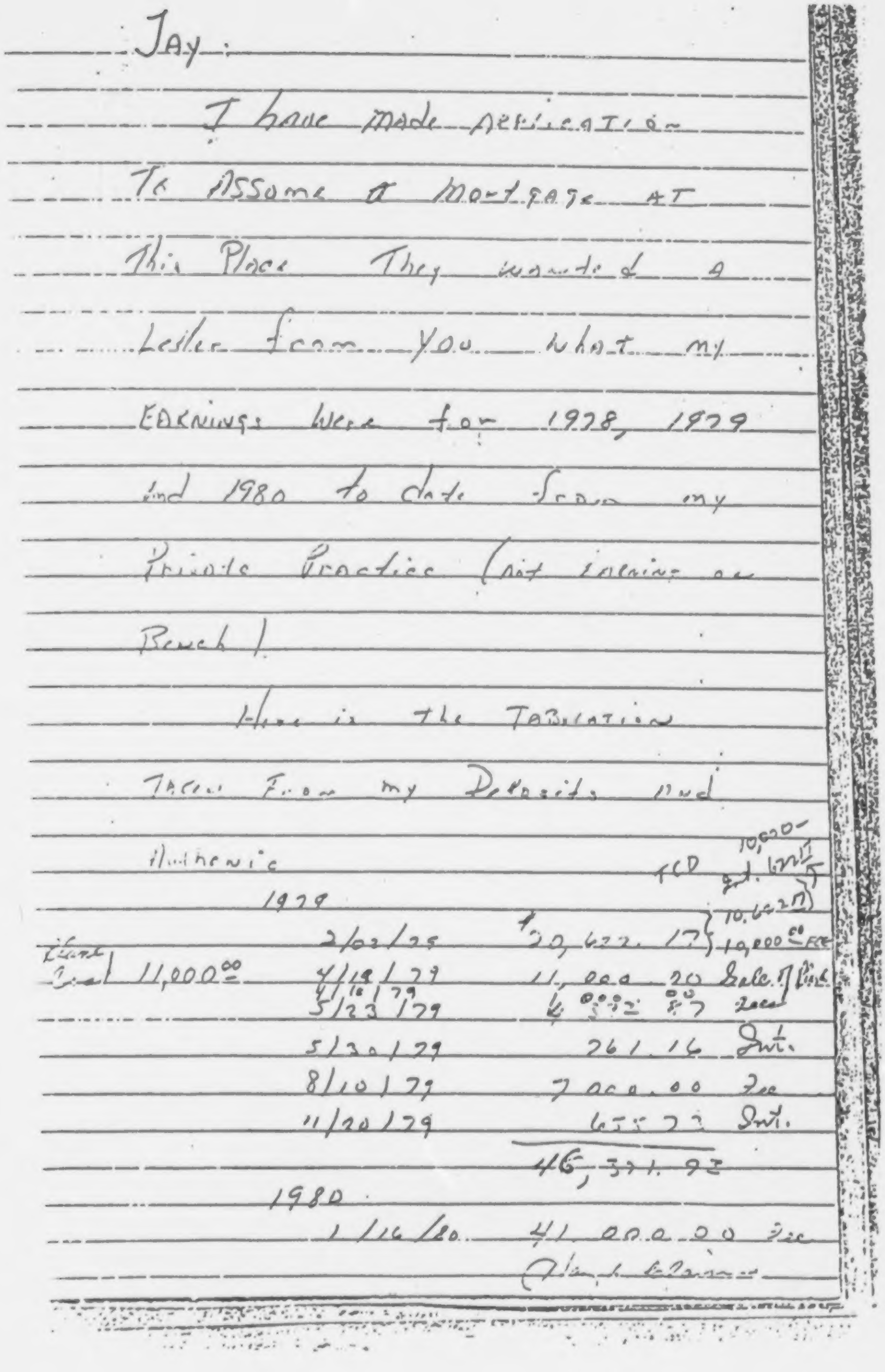
I have made application To assume a mortgage at this Place They wanted a Letter from you what my Earnings were for 1978, 1979 and 1980 to date from my Private Practice (not Earnings on Bench).

Here is the Tabulation Taken From my Deposits and Authentic

FCD 10,000—
Int. 622.17

	1979		
	2/02/79	$20,622.17	10,622.17 10,000.00 Fee
Land Cost 11,000.00	4/18/79	11,000.00	Sale of Place
	4/18/79 5/23/79	[illegible]	Fee
	5/30/79	261.16	Int.
	8/10/79	7,000.00	Fee
	11/20/79	65[illegible].73	Int.
		46,371.93	
	1980		
	1/16/80	41,000.00	Fee

House Exhibit #17



Jay:

I have made application To Assume a Mortgage At This Place They wanted a Letter from you what my Earnings Were for 1978, 1979 and 1980 to date from my Private Practice (not earning on Bench).

Here is The Tabulation Taken From my Deposits and Authentic

1979

	2/02/79	20,622.17	10,000 – Int. 622.17 10,622.17 10,000.00 Fee FCD
[illegible] 11,000.00	4/18/79	11,000.20	Sale of [illegible]
	4/18/79 5/23/79	6,000.87	Fee
	5/30/79	261.16	Int.
	8/10/79	7,000.00	Fee
	11/20/79	655.72	Int.
		46,371.93	

1980

1/16/80	41,000.00	Fee

JOSEPH C. WRIGHT
PUBLIC ACCOUNTANT
PROCESSED DATA BUILDING
1208 COMMERCE STREET
LAS VEGAS, NEVADA
382-8801

March 7, 1980

Stanwell Mortgage Company
1001 Keno Lane
Las Vegas, Nevada 89114

Gentlemen:

I have been Judge Harry Claiborne's Accountant for over thirty years and he has asked me to furnish you the following information concerning his earnings from the private practice of law:

The year 1978 (the year he went on the federal bench) his earnings from the private practice of law was $78,723.46.

His earnings from the private practice of law for the year1979 was $45,371.93.

His earnings from the private practice of law so far in 1980 is $41,800.00.

Very truly yours,

Joseph C. Wright

JOSEPH C. WRIGHT

House Exhibit #18

JOSEPH C. WRIGHT
PUBLIC ACCOUNTANT
PROCESSED DATA BUILDING
1209 COMMERCE STREET
LAS VEGAS, NEVADA
382-0601

May 22, 1980

First Western Savings & Loan Association
953 E. Sahara Avenue
Las Vegas, Nevada, 89104

Gentlemen,

I have been Judge Harry Claiborne's Accountant for over thirty years, and he has asked me to furnish you the following information concerning his earnings from the private practice of law:

The year 1978 (the year he went on the federal bench), his earnings from the private practice of law was $78,723.46.

His earnings from the private practice of law for the year 1979 was $45,371.93.

His earnings from the private practice of law so far in 1980 is $41,000.00.

Very truly yours,

Joseph C. Wright

Joseph C. Wright

jcw/cw

JOSEPH C. WRIGHT
PUBLIC ACCOUNTANT
PROCESSED DATA BUILDING
1208 COMMERCE STREET
LAS VEGAS, NEVADA
382-6601

May 22, 1980

First National Bank of Nevada
Main Office
302 East Carson Street
Las Vegas, Nevada, 89101

Gentlemen,

I have been Judge Harry Claiborne's Accountant for over thirty years, and he has asked me to furnish you the following information concerning his earnings from the private practice of law:

The year 1978 (the year he went on the federal bench), his earnings from the private practice of law was $78,723.46.

His earnings from the private practice of law for the year 1979 was $45,371.93.

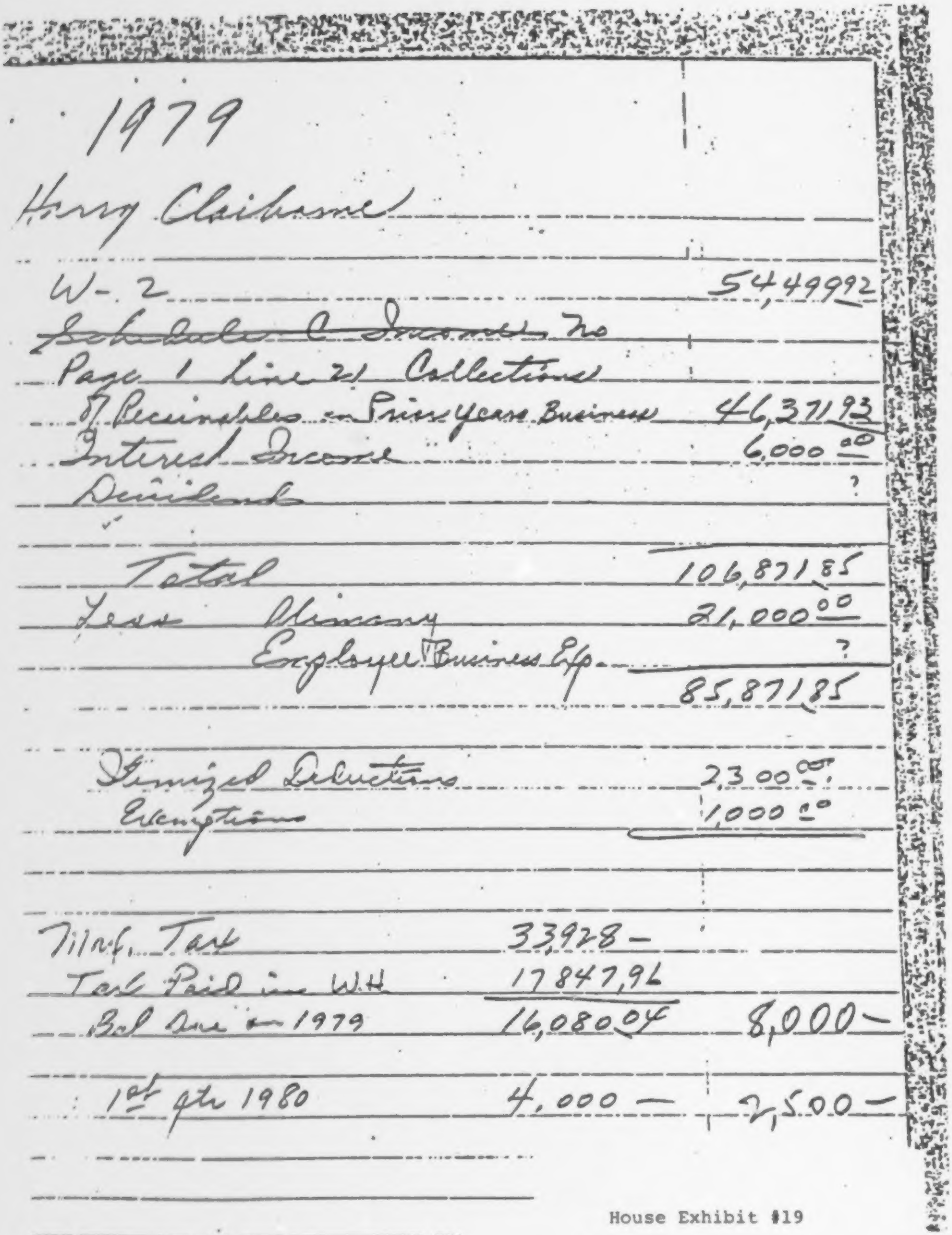
His earnings from the private practice of law so far in 1980 is $41,000.00.

Very truly yours,

Joseph C. Wright

Joseph C. Wright

jcw/cw



1979

Harry Claiborne

W-2		54,499.92
~~Schedule C Income~~ No		
Page 1 line 21 Collections of Receivables on Prior Years Business		46,371.93
Interest Income		6,000.00
Dividend		?
Total		106,871.85
Less Alimony		21,000.00
Employee Business Exp.		?
		85,871.85
Itemized Deductions		2300.00 ?
Exemptions		1,000.00
Tent. Tax	33,928 –	
Tax Paid in W.H.	17,847.96	
Bal Due on 1979	16,080.04	8,000 –
1st qtr 1980	4,000 –	2,500 –

House Exhibit #19

(265)

Form 4868
Department of the Treasury
Internal Revenue Service

Application for Automatic Extension of Time to File U.S. Individual Income Tax Return

1979

Note: *File this form with the Internal Revenue Service Center where you must file your income tax return and pay the amount shown on line 6 below. This is not an extension of time for payment of tax. The law requires that a penalty be charged for late payment of tax unless you show reasonable cause for not paying the tax when due (See instruction G.).*

Please Print or Type	Name (If joint return, give first names and initials of both) HARRY E.	Last name CLAIBORNE	Your social security number 431 14 0100
	Present home address (Number and street, including apartment number, or rural route) 810 PINEHURST DRIVE		Spouse's social security no.
	City, town or post office, State, and ZIP code LAS VEGAS, NEVADA, 89109		

An automatic 2-month extension of time until June 15, 1980, is requested in which to file Form 1040 for the calendar year 1979 (or if a fiscal year return until ________, 19___ for the tax year beginning ________, 1979, and ending ________, 1980).

1 Total tax you expect to owe for 1979 (see Instruction E)		25,847.96
2 Federal income tax withheld	17,847.96	
3 1979 estimated tax payments (include 1978 overpayment allowed as a credit)		
4 Other payments (see Instruction D)		
5 Total (add lines 2, 3, and 4)		17,847.96
6 BALANCE DUE (subtract line 5 from line 1). Pay in full with this form		8,000.00

Signature and Verification

If Prepared by Taxpayer.—Under penalties of perjury, I declare that I have examined this form, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete.

Your signature ________ Date ________

Spouse's signature (if filing jointly, BOTH must sign even if only one had income) ________ Date ________

If Prepared by Someone Other Than Taxpayer.—Under penalties of perjury, I declare that I have examined this form, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete, that I am authorized to prepare this form, and that I am:

☐ A member in good standing of the bar of the highest court of (specify jurisdiction) ________

☐ A certified public accountant qualified to practice in (specify jurisdiction) ________

☐ A person enrolled to practice before the Internal Revenue Service.

☐ An authorized agent holding a power of attorney. (The power of attorney need not be submitted unless requested.)

☐ A person in close personal or business relationship to the taxpayer who cannot sign this form because of illness, absence, or other good cause. My relationship to the taxpayer and the reasons why the taxpayer cannot sign this form are ________

Joseph L Wright
Signature of preparer other than taxpayer

4/11/80
Date

See instructions on back.

Form 4868 (1979)

House Exhibit #20

PIONEER CITIZENS BANK

EARNINGS:

Federal Judge	$54,499.92
Private Law Practice Before Judgeship	22,332.87

INterest EARnings

Nevada Savings	$2,040.25
Pioneer Citizens Bank T.C.D	2,039.00
Sale of Airplane	11,000.00
Paid $11,500 for Plane in 1978	11 500.00
Personal Loss	500.00

House Exhibit #21

Medical Expenses

Dr. Russell Miller	$205.00 ~~180.00~~
Dr. Adrian Zorgniotti	135.00
Valley Hospital, L.V.	240.00
Cabrini Medical Center New York, N.Y.	$1,560.39
Southern Nev. Memorial Hosp. L.V.	34.50
Dr. Irving Kline	[illegible] 319.50 ~~215.00~~
	2,359.29 ✓

Donations

Univ. of Nevada, L.V. Scholarship Donation	$500.00 ✓
March of Dimes	25.00
	525.00

Real Property Taxes	$3,651.40 ✓

Alimony 21,000.00 ✓

INSURANCE

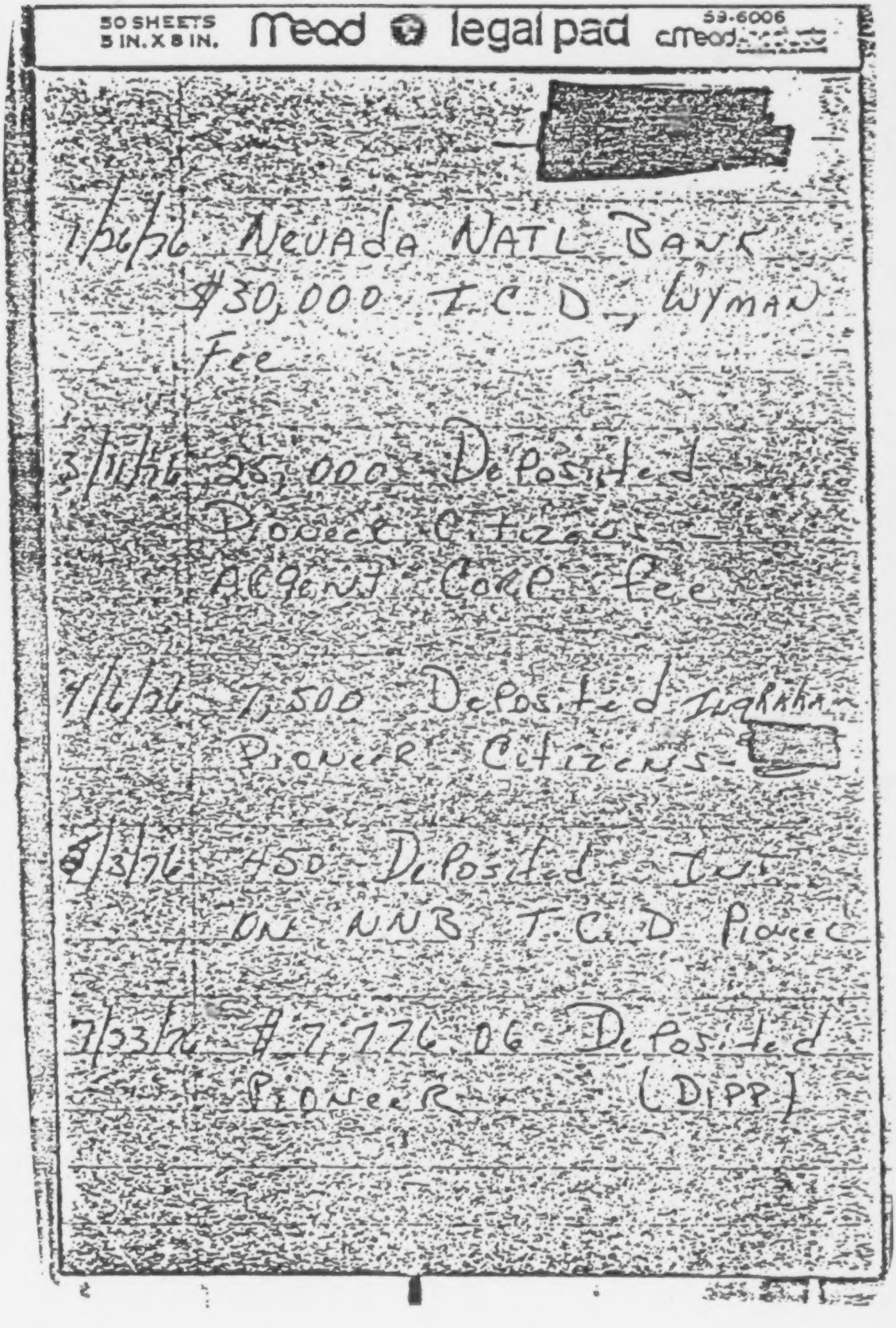
~~New York Life~~	~~$2,088.00~~
Physicians Mutual Ins.	218.90
Mutual of Omaha	85.00

Private Practice Expense

Had Counter Built in New Office at 300 3rd St. 1978. Became Part of Fixtures and I Lost it when I Retired to Become a Federal Judge. Didnt get Bill until Aug 1979.

Paid to 3D ~~Wood~~ Cabinet Makers $ 400.00

Deluca Maintenance - 285.00
1978 Office Bill
Paid 6/9/79



50 SHEETS
5 IN. X 8 IN.
Mead legal pad
59-6006
©Mead

[redacted]

1/26/76 Nevada Natl Bank
$30,000 T.C.D. – Wyman
Fee

3/11/76 25,000 Deposited
Pioneer Citizens –
Argent Corp. Fee

4/6/76 7,500 Deposited [illegible]
Pioneer Citizens – [redacted]

8/3/76 450 Deposited Int.
on NNB T.C.D Pioneer

7/23/76 $7,776.06 Deposited
Pioneer (DIPP)

7/29/76 $550 Deposited
Pioneer

8/24/76 3,000 Withdrawn
Cashiers Check Purchased
#423326 to Carol

9/13/76 25,000 Deposited Pioneer
(Marge Klfiegen)

10/27/76 450.00 INT ON CTD
N.N.B Deposited
Pioneer

2/10/77 460.00 INT ON CTD
NNB Deposited AT
Pioneer

MAY 4, 77 20,000 Syd Wyman
(Deposited Pioneer) Diamond

MAY 31, 77 445.00 INT
(Pioneer) N.N.R. on TCD

June 3, '77 Sold Nugget
stock for $138,000
Deposited to Office
ACCOUNT. (72,000 Capital
gain)

June 6, 1977 Bought 50,000
TCD Pioneer Bank with
Cashiers check Payable
To me FNB No. 128694
Dated Dec 8, 1975 —
withdrawn from my
ACCOUNT FNB Same DAY.

Sept 19, 1977 Deposited
AT Pioneer $750.00
Int ON TCD from Pioneer

—

Nov 15, 1977 Deposited
AT Pioneer $450.00 int
ON CTD NNB # 1703
Check # 84245 - (Cashier)

Dec 13, 1977 Deposited
AT Pioneer 750.00
INT. ON Pioneer CTD

JAN 3, 78. Deposited 30,000
AT Pioneer. Pecoole
LAND TRANSACTION. (Recd ~~12-30-78~~)
12-30-77

June 14, 1978 - Deposited
$460.00 N.N.B TCD Int.

Aug 21, 1978 750 Deposited
(Down on Airplane $500.00
+ Marty's Loan)

Sept 22, 1978 460 Deposited
Pioneer - NNB TCD interest

Oct 2, 1978 - Jim Brown
$1,207.10 Horseshoe
$2,250.00 Deposited At
Pioneer

Oct 11, 1978 - $5,500.00 McFarmin - Pioneer

Oct 18, 1978 Jim Brown
$2,000 Deposited At Pioneer

Oct 23, 1978 Stan Brown
(Sally Contact) $5,000 Cash.

Nov 4, 1978 Jim Brown
$3,209.27 Deposited
Pioneer.

Nov 4, 1978 $5,080.05
Deposited Pioneer

December 30, 1978 Deposited
Pioneer: Jim Brown
$1968.75; Southern
Wine + Spirits $15,260.50
And NNB $455.00 INT
ON TCD, McLaren
(Law Books) $500.00; IRS
$365.

JAN 5, 1979 $3,33[illegible]
Jim Brown Deposited Pioneer

JAN 16, 1979 $1,000.00 Annette
Deposited Pioneer

JAN 19, 1979 $17,500.00 Jim
BROWN Deposited Pioneer

JAN 26, 1979 $833.33 Jim
BROWN Horseshoe

JAN 26, 1979 $84.38 Jim
BROWN Deposited Pioneer

FEB 12, 1979 $1000.00 Annette
Deposited Pioneer

FEB 25, 1979 $1,166.66 Jim Brown
D. HORSEshoe

MAR 10, 1979 $1000.00
Annette Deposited
Pioneer

Apr. 12, 1979 $1000.00 Annette
Deposited Pioneer

May 15, 1979 $1000.00
Annette Horseshoe

July 19, 1979 $7,000.00 Jim
Brown Deposited Pioneer

Sept 20, 1979 $2,905.90
Jim Brown Horseshoe

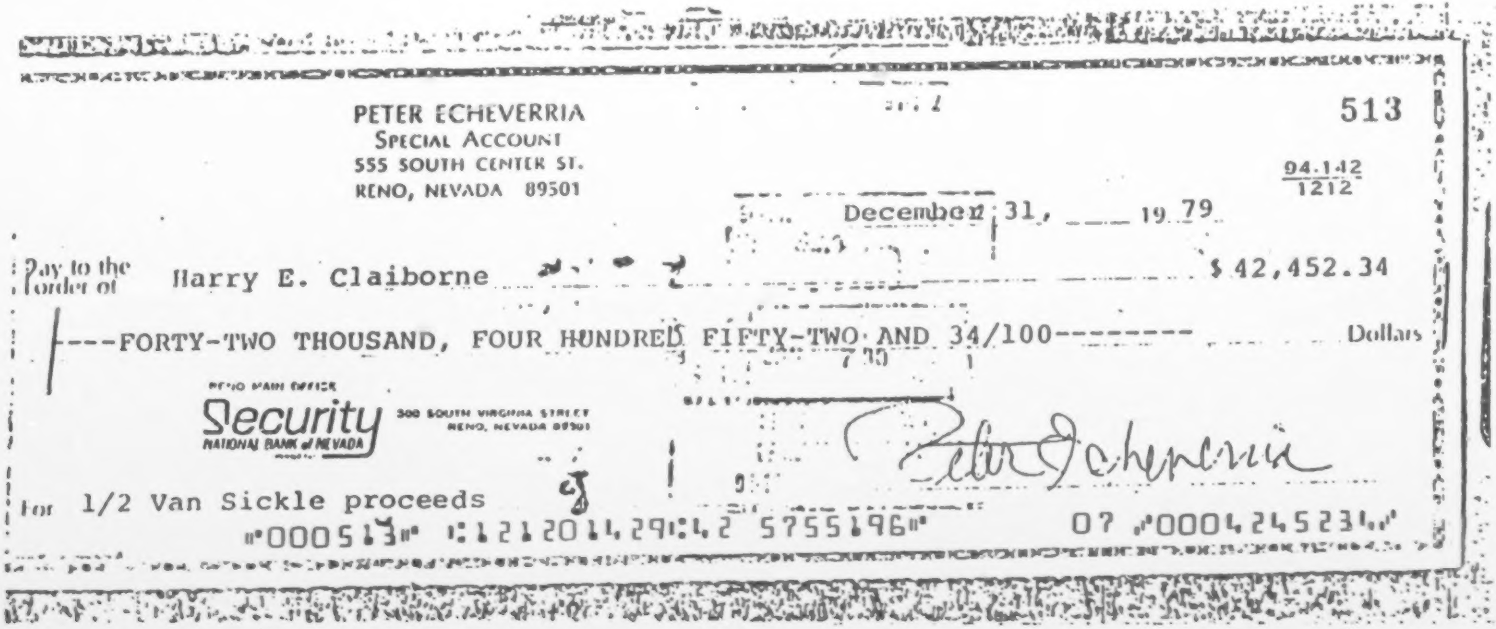
Nov 13, 1979 $250.00 Jim
Brown Deposited Pioneer

NOV 19, 1979 $3,012.56
Jim BROWN Horseshoe

JAN 4, 1980 $42,452.34
Pete ECheverria (VAN
Sickle) Deposited Pioneer
Hand Delivered
AUG 6, 1980 $888.30 Jim
BROWN Deposited Pioneer

AUG 15, 1980 $37,500 WYMAN
Estate Cashed Golden Nugget
NOV 10, 1980 $7,071.79 JimBROWN
MAR 20, 1981 JimBROWN $49,000
(ENTRATTER) Deposited Pioneer

MAY 7, 1982 Tom Cochrane
$833.33 Deposited FIB



PETER ECHEVERRIA
Special Account
555 South Center St.
Reno, Nevada 89501

513

94-142
1212

December 31, 19 79

Pay to the order of Harry E. Claiborne $ 42,452.34

---FORTY-TWO THOUSAND, FOUR HUNDRED FIFTY-TWO AND 34/100-------- Dollars

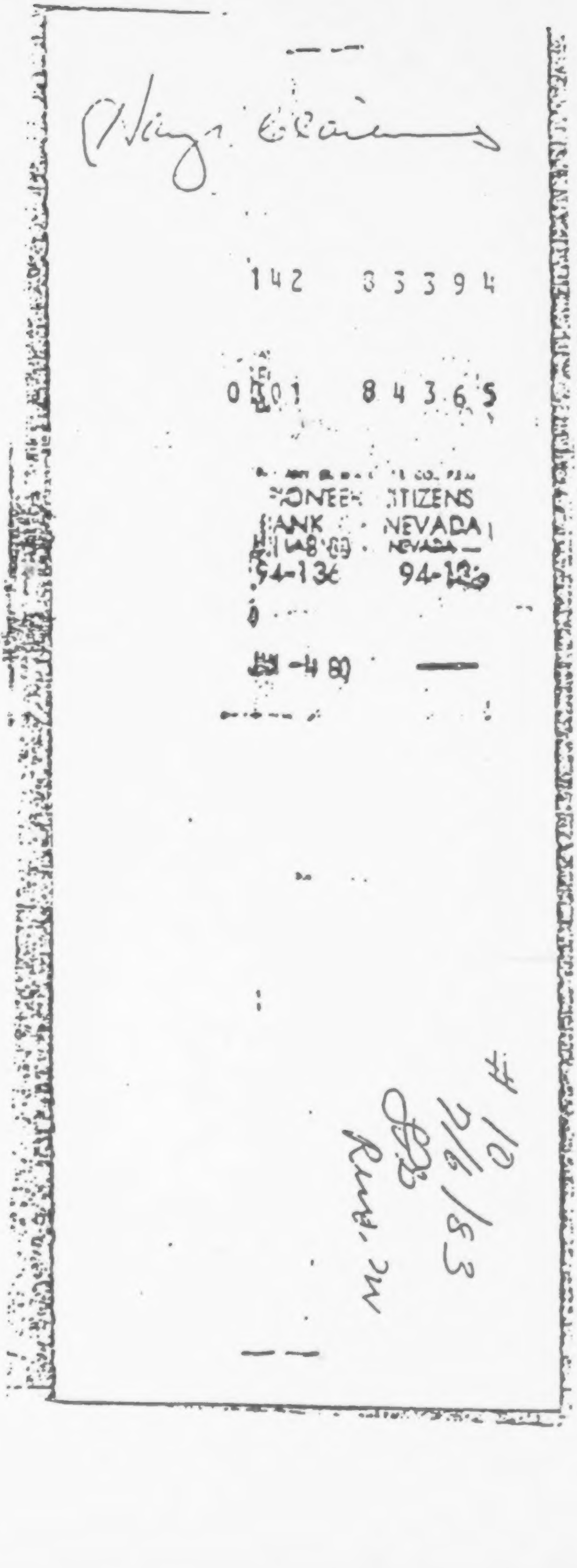
RENO MAIN OFFICE
Security
NATIONAL BANK of NEVADA
300 SOUTH VIRGINIA STREET
RENO, NEVADA 89501

For 1/2 Van Sickle proceeds

Peter Echeverria

⑈000513⑈ ⑆121201429⑆42 5755196⑈ 07 ⑈0004245234⑈

House Exhibit #23



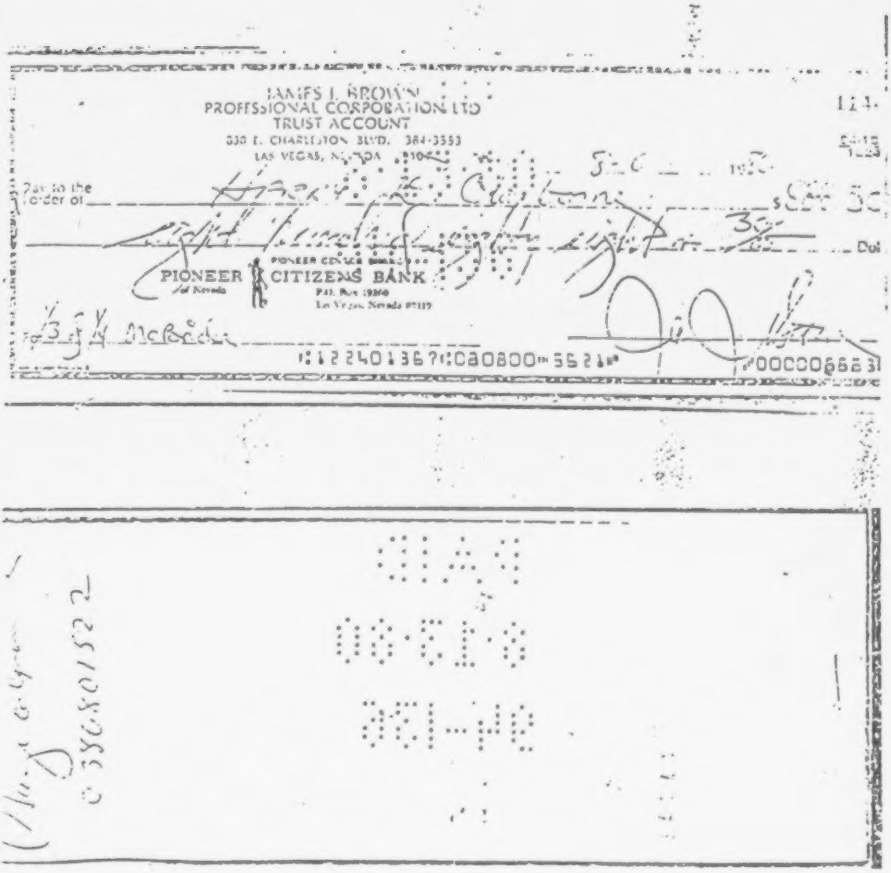
142 33394

0101 84365

PIONEER CITIZENS
BANK [illegible] NEVADA
[illegible] NEVADA
94-136 94-12[illegible]

-4 80

10
2/6/83
Reno, NV



JAMES L. BROWN
PROFESSIONAL CORPORATION LTD
TRUST ACCOUNT
330 E. CHARLESTON BLVD. 384-3553
LAS VEGAS, NEVADA 8910[illegible]

114

Pay to the order of Harry E. Claiborne $ [illegible]

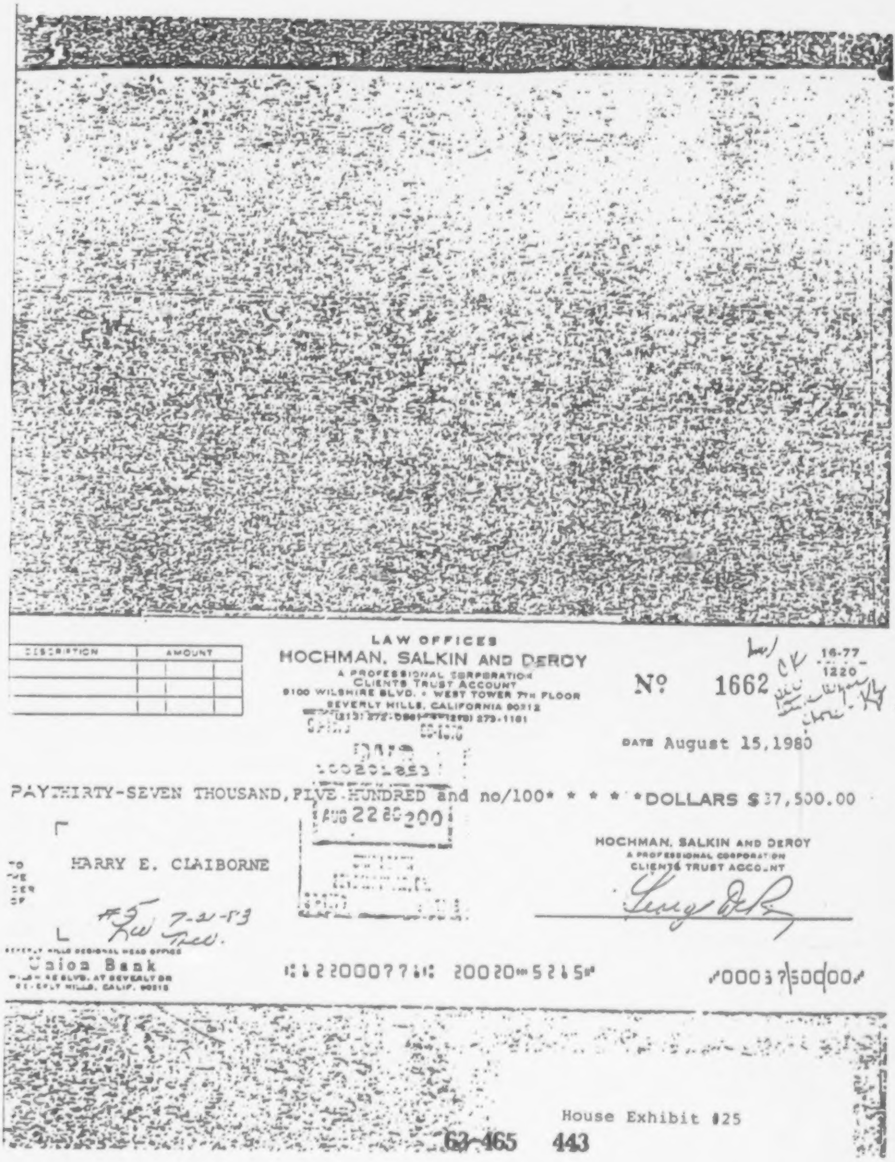
Eight hundred eighty eight & 30/100 Dollars

PIONEER of Nevada CITIZENS BANK
P.O. Box 19260
Las Vegas, Nevada 89119

For 3 of 4 McBride

⑆122401367⑆080800⑈5521⑈ ⑈0000086623⑈

House Exhibit #24



DESCRIPTION	AMOUNT

LAW OFFICES
HOCHMAN, SALKIN AND DEROY
A PROFESSIONAL CORPORATION
CLIENTS TRUST ACCOUNT
9100 WILSHIRE BLVD. • WEST TOWER 7TH FLOOR
BEVERLY HILLS, CALIFORNIA 90212
(213) 272-0861 • (213) 273-1181

№ 1662

CK

16-77
1220

DATE August 15,1980

AUG 22 80 200

PAY THIRTY-SEVEN THOUSAND,FIVE HUNDRED and no/100* * * * *DOLLARS $37,500.00

TO THE ORDER OF HARRY E. CLAIBORNE

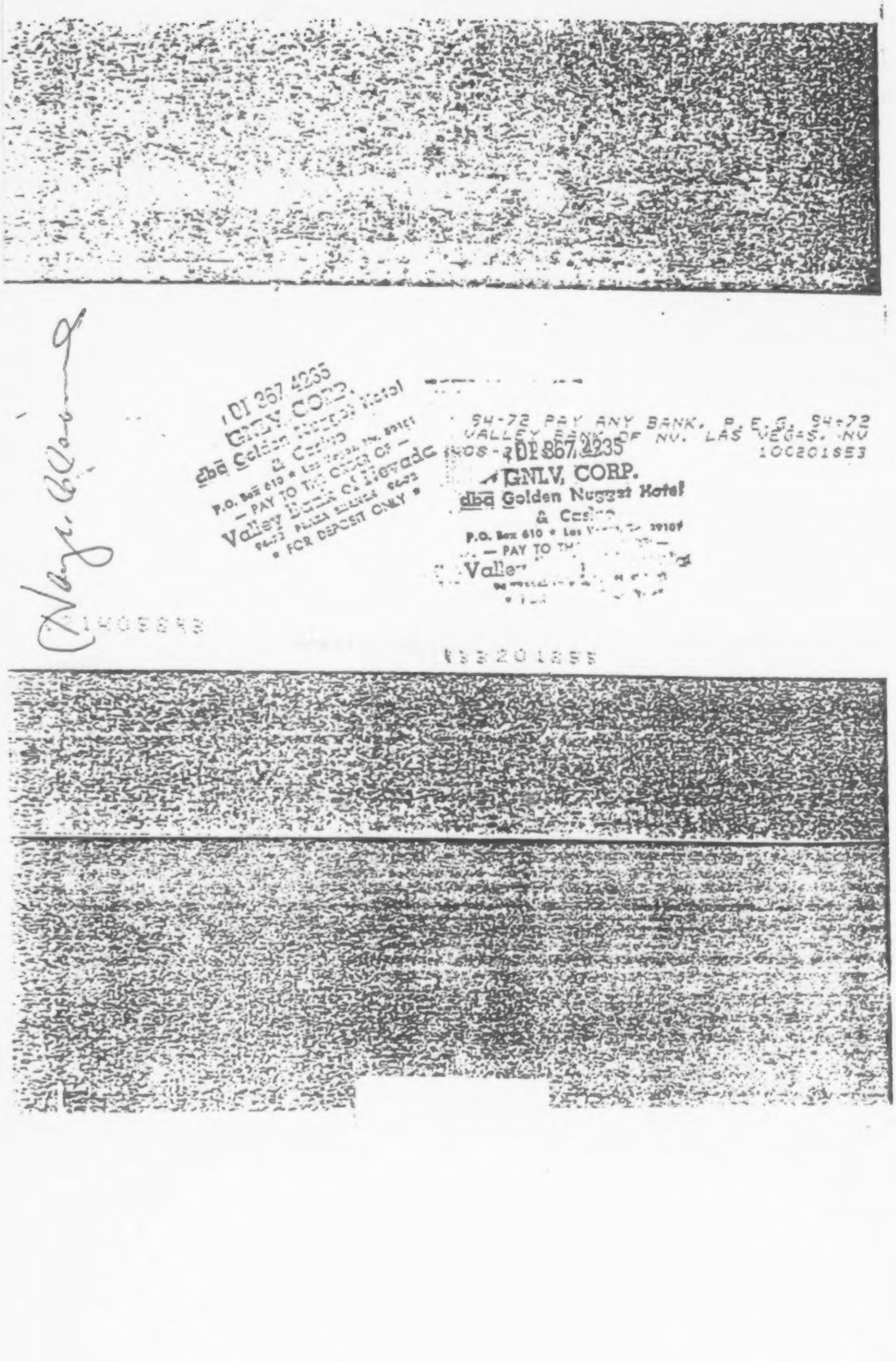
#5 RW 7-21-83

HOCHMAN, SALKIN AND DEROY
A PROFESSIONAL CORPORATION
CLIENTS TRUST ACCOUNT

BEVERLY HILLS REGIONAL HEAD OFFICE
Union Bank
WILSHIRE BLVD. AT BEVERLY DR
BEVERLY HILLS, CALIF. 90212

⑆122000771⑆ 20020⑈5215⑈ ⑈0003750000⑈

House Exhibit #25



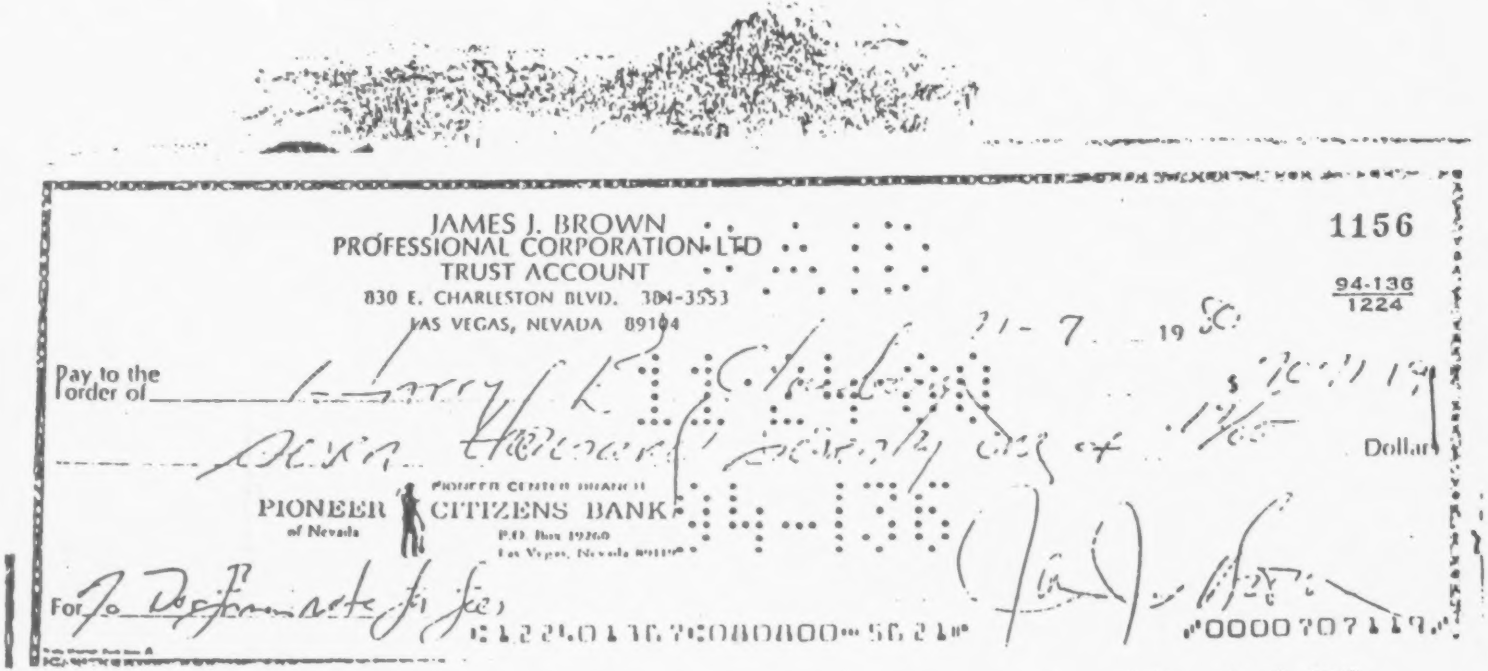
101 367 4235
GNLV CORP.
dba Golden Nugget Hotel
& Casino
P.O. Box 610 • Las Vegas, Nv. 89101
— PAY TO THE ORDER OF —
Valley Bank of Nevada
94-72 PLAZA BRANCH 94-72
• FOR DEPOSIT ONLY •

94-72 PAY ANY BANK, P.E.G. 94-72
VALLEY BANK OF NV. LAS VEGAS, NV
100201853

101 367 4235
GNLV, CORP.
dba Golden Nugget Hotel
& Casino
P.O. Box 610 • Las Vegas, [illegible] 89101
— PAY TO TH[illegible] —
Valle[illegible]

1405893

133201855



JAMES J. BROWN
PROFESSIONAL CORPORATION LTD
TRUST ACCOUNT
830 E. CHARLESTON BLVD. 384-3553
LAS VEGAS, NEVADA 89104

1156

94-136
1224

11-7 19 80

Pay to the order of Larry K. [illegible] $ 7021.17

Seven thousand twenty one & 17/100 Dollars

PIONEER CENTER BRANCH
PIONEER of Nevada CITIZENS BANK
P.O. Box 19260
Las Vegas, Nevada 89119

94-136

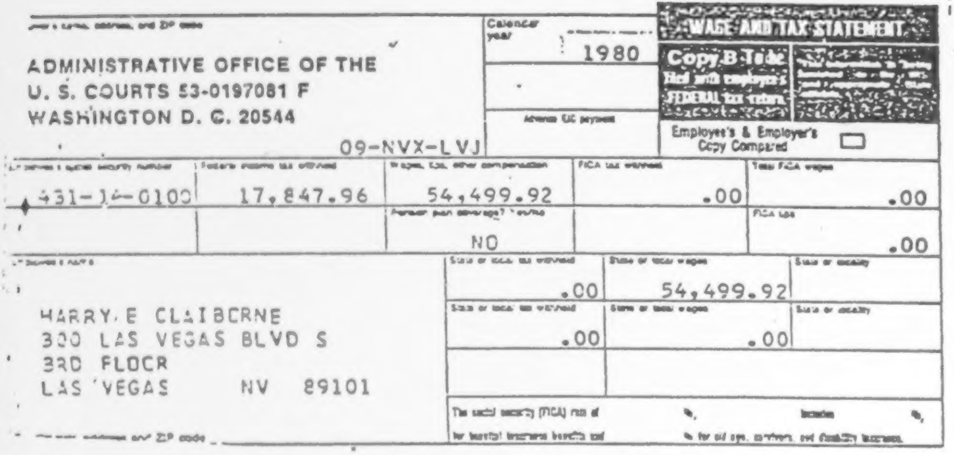
For To [illegible] fees

⑆122401367⑆080800⑈56 21⑈ ⑈0000702119⑈

House Exhibit #26

0380801522

PAID
11.24.00
94-136



Employer's name, address, and ZIP code

ADMINISTRATIVE OFFICE OF THE
U. S. COURTS 53-0197081 F
WASHINGTON D. C. 20544

09-NVX-LVJ

Calendar year 1980

Advance EIC payment

WAGE AND TAX STATEMENT

Copy B To be filed with employee's FEDERAL tax return

Employee's & Employer's Copy Compared ☐

Employee's social security number	Federal income tax withheld	Wages, tips, other compensation	FICA tax withheld	Total FICA wages
431-14-0100	17,847.96	54,499.92	.00	.00
		Pension plan coverage? Yes/No		FICA tips
		NO		.00

Employee's name

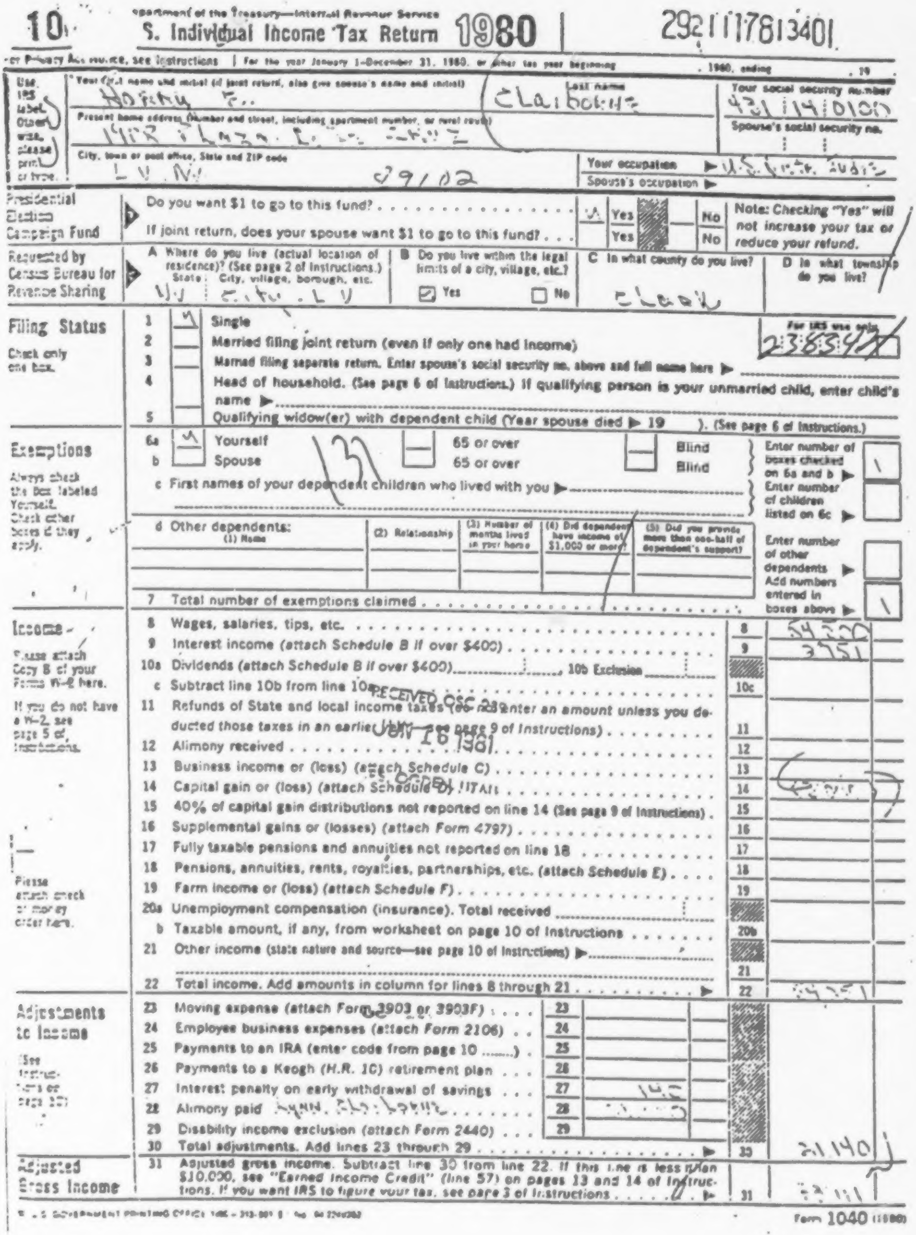
HARRY E CLAIBORNE
300 LAS VEGAS BLVD S
3RD FLOOR
LAS VEGAS NV 89101

Employee's address and ZIP code

State or local tax withheld	State or local wages	State or locality
.00	54,499.92	
State or local tax withheld	State or local wages	State or locality
.00	.00	

The social security (FICA) rate of %, includes %, for hospital insurance benefits and % for old age, survivors, and disability insurance.

House Exhibit #27



10 | Department of the Treasury—Internal Revenue Service
S. Individual Income Tax Return 1980 | 2921117813401

For Privacy Act notice, see Instructions | For the year January 1–December 31, 1980, or other tax year beginning , 1980, ending , 19

Use IRS label. Otherwise, please print or type.

Your first name and initial (if joint return, also give spouse's name and initial): Harry E.
Last name: Claiborne
Your social security number: [illegible]
Present home address (Number and street, including apartment number, or rural route): [illegible]
Spouse's social security no.
City, town or post office, State and ZIP code: L V. NV 89102
Your occupation ▶ U.S. Dist. Judge
Spouse's occupation ▶

Presidential Election Campaign Fund
Do you want $1 to go to this fund? . . . ✓ Yes ☐ No
If joint return, does your spouse want $1 to go to this fund? . . . ☐ Yes ☐ No
Note: Checking "Yes" will not increase your tax or reduce your refund.

Requested by Census Bureau for Revenue Sharing
A Where do you live (actual location of residence)? (See page 2 of Instructions.) State: NV City, village, borough, etc.: City. L V
B Do you live within the legal limits of a city, village, etc.? ☑ Yes ☐ No
C In what county do you live? Clark
D In what township do you live?

Filing Status
Check only one box.
1 ✓ Single
2 ☐ Married filing joint return (even if only one had income)
3 ☐ Married filing separate return. Enter spouse's social security no. above and full name here ▶
4 ☐ Head of household. (See page 6 of Instructions.) If qualifying person is your unmarried child, enter child's name ▶
5 ☐ Qualifying widow(er) with dependent child (Year spouse died ▶ 19). (See page 6 of Instructions.)

For IRS use only: 238347

Exemptions
Always check the box labeled Yourself. Check other boxes if they apply.
6a ✓ Yourself ☐ 65 or over ☐ Blind
b ☐ Spouse ☐ 65 or over ☐ Blind
Enter number of boxes checked on 6a and b ▶ 1
c First names of your dependent children who lived with you ▶
Enter number of children listed on 6c ▶
d Other dependents:

(1) Name	(2) Relationship	(3) Number of months lived in your home	(4) Did dependent have income of $1,000 or more?	(5) Did you provide more than one-half of dependent's support?

Enter number of other dependents ▶
7 Total number of exemptions claimed . . . Add numbers entered in boxes above ▶ 1

131

Income
Please attach Copy B of your Forms W-2 here.
If you do not have a W-2, see page 5 of Instructions.
Please attach check or money order here.

8	Wages, salaries, tips, etc.	8	54300
9	Interest income (attach Schedule B if over $400)	9	3751
10a	Dividends (attach Schedule B if over $400) .... 10b Exclusion		
c	Subtract line 10b from line 10a	10c	
11	Refunds of State and local income taxes (do not enter an amount unless you deducted those taxes in an earlier year—see page 9 of Instructions)	11	
12	Alimony received	12	
13	Business income or (loss) (attach Schedule C)	13	
14	Capital gain or (loss) (attach Schedule D)	14	[illegible]
15	40% of capital gain distributions not reported on line 14 (See page 9 of Instructions)	15	
16	Supplemental gains or (losses) (attach Form 4797)	16	
17	Fully taxable pensions and annuities not reported on line 18	17	
18	Pensions, annuities, rents, royalties, partnerships, etc. (attach Schedule E)	18	
19	Farm income or (loss) (attach Schedule F)	19	
20a	Unemployment compensation (insurance). Total received		
b	Taxable amount, if any, from worksheet on page 10 of Instructions	20b	
21	Other income (state nature and source—see page 10 of Instructions) ▶	21	
22	Total income. Add amounts in column for lines 8 through 21 ▶	22	[illegible]

RECEIVED OSC [illegible]
JAN 16 1981
[illegible]

Adjustments to Income
(See Instructions on page 10)

23	Moving expense (attach Form 3903 or 3903F)	23	
24	Employee business expenses (attach Form 2106)	24	
25	Payments to an IRA (enter code from page 10 ....)	25	
26	Payments to a Keogh (H.R. 10) retirement plan	26	
27	Interest penalty on early withdrawal of savings	27	145
28	Alimony paid [illegible] Claiborne	28	[illegible]
29	Disability income exclusion (attach Form 2440)	29	
30	Total adjustments. Add lines 23 through 29 ▶	30	21140

Adjusted Gross Income
31 Adjusted gross income. Subtract line 30 from line 22. If this line is less than $10,000, see "Earned Income Credit" (line 57) on pages 13 and 14 of Instructions. If you want IRS to figure your tax, see page 3 of Instructions ▶ 31 [illegible]

U.S. GOVERNMENT PRINTING OFFICE: 1980—313-001 [illegible]
Form 1040 (1980)

Form 1040 (1980) Page 2

32	Amount from line 31 (adjusted gross income)			32	[illegible]
33	If you do not itemize deductions, enter zero If you itemize, complete Schedule A (Form 1040) and enter the amount from Schedule A, line 41 Caution: If you have unearned income and can be claimed as a dependent on your parent's return, check here ▶ ☐ and see page 11 of the Instructions. Also see page 11 of the Instructions if: • You are married filing a separate return and your spouse itemizes deductions, OR • You file Form 4563, OR • You are a dual-status alien.			33	[illegible]
34	Subtract line 33 from line 32. Use the amount on line 34 to find your tax from the Tax Tables, or to figure your tax on Schedule TC, Part I Use Schedule TC, Part I, and the Tax Rate Schedules ONLY if: • Line 34 is more than $20,000 ($40,000 if you checked Filing Status Box 2 or 5), OR • You have more exemptions than are shown in the Tax Table for your filing status, OR • You use Schedule G or Form 4726 to figure your tax. Otherwise, you MUST use the Tax Tables to find your tax.			34	11,05[illegible]
35	Tax. Enter tax here and check if from ☒ Tax Tables or ☐ Schedule TC [illegible]			35	1403
36	Additional taxes. (See page 12 of Instructions.) Enter here and check if from ☐ Form 4970, ☐ Form 4972, ☐ Form 5544, ☐ Form 5405, or ☐ Section 72(m)(5) penalty tax			36	
37	Total. Add lines 35 and 36 ▶			37	1403
38	Credit for contributions to candidates for public office	38			
39	Credit for the elderly (attach Schedules R&RP)	39			
40	Credit for child and dependent care expenses (attach Form 2441)	40			
41	Investment credit (attach Form 3468)	41			
42	Foreign tax credit (attach Form 1116)	42			
43	Work incentive (WIN) credit (attach Form 4874)	43			
44	Jobs credit (attach Form 5884)	44			
45	Residential energy credits (attach Form 5695)	45	300		
46	Total credits. Add lines 38 through 45			46	300
47	Balance. Subtract line 46 from line 37 and enter difference (but not less than zero) ▶			47	1103
48	Self-employment tax (attach Schedule SE)			48	
49a	Minimum tax. Attach Form 4625 and check here ▶ ☐			49a	
49b	Alternative minimum tax. Attach Form 6251 and check here ▶ ☐			49b	
50	Tax from recomputing prior-year investment credit (attach Form 4255)			50	
51a	Social security (FICA) tax on tip income not reported to employer (attach Form 4137)			51a	
51b	Uncollected employee FICA and RRTA tax on tips (from Form W-2)			51b	
52	Tax on an IRA (attach Form 5329)			52	
53	Advance earned income credit (EIC) payments received (from Form W-2) 109			53	
54	Balance. Add lines 47 through 53			54	1103
55	Total Federal income tax withheld	55	17,848		
56	1980 estimated tax payments and amount applied from 1979 return	56	4,182		
57	Earned income credit. If line 32 is under $10,000, see pages 13 and 14 of Instructions	57			
58	Amount paid with Form 4868	58			
59	Excess FICA and RRTA tax withheld (two or more employers)	59			
60	Credit for Federal tax on special fuels and oils (attach Form 4136 or 4136–T)	60			
61	Regulated Investment Company credit (attach Form 2439)	61			
62	Total. Add lines 55 through 61 ▶			62	22,030
63	If line 62 is larger than line 54, enter amount OVERPAID			63	20,927
64	Amount of line 63 to be REFUNDED TO YOU 209			64	20,927
65	Amount of line 63 to be applied to your 1981 estimated tax ▶	65			
66	If line 54 is larger than line 62, enter BALANCE DUE. Attach check or money order for full amount payable to "Internal Revenue Service." Write your social security number on check or money order. (Check ▶ ☐ if Form 2210 (2210F) is attached. See page 15 of Instructions.) ▶ $			66	

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

▶ 6-[illegible]-8[illegible]
Your signature Date ▶ Spouse's signature (if filing jointly, BOTH must sign even if only one had income)

Preparer's signature
COMPREHENSIVE PLANNING CONSULTING
Firm's name (or yours, if self-employed) and address
Consulting
[illegible] E Desert Inn Rd LV NV
Las Vegas, Nevada 89109

Check if self-employed ▶ ☐
Preparer's social security no. 442 32 5333
E.I. No. ▶ 88 0152519
ZIP code ▶ 89109

chedules A&B—Itemized Deductions AND Interest and Dividend Income

m 1040)
tment of the Treasury
l Revenue Service

▶ Attach to Form 1040. ▶ See Instructions for Schedules A and B (Form 1040).

80
08

e(s) as shown on Form 1040: [illegible]
Your social security number: [illegible]

Schedule A—Itemized Deductions *(Schedule B is on back)*

dical and Dental Expenses (not paid or reimbursed by urance or otherwise) *(See page 16 of Instructions.)*

One-half (but not more than $150) of insurance premiums you paid for medical care. (Be sure to include in line 10 below.) ▶	150	
Medicine and drugs .		
Enter 1% of Form 1040, line 31 . . .		
Subtract line 3 from line 2. If line 3 is more than line 2, enter zero		
Balance of insurance premiums for medical care not entered on line 1	1220	
Other medical and dental expenses:		
a Doctors, dentists, nurses, etc. . . .		
b Hospitals		
c Other (itemize—include hearing aids, dentures, eyeglasses, transportation, etc.) ▶		
Total (add lines 4 through 6c)	[illegible]	
Enter 3% of Form 1040, line 31 . . .	[illegible]	
Subtract line 8 from line 7. If line 8 is more than line 7, enter zero	237	
Total medical and dental expenses (add lines 1 and 9). Enter here and on line 33 . ▶		387

es *(See page 17 of Instructions.)*
: Gasoline taxes are no longer deductible.

State and local income		
Real estate	3904	
General sales (see sales tax tables) . .	[illegible]	
Personal property		
Other (itemize) ▶		
Total taxes (add lines 11 through 15). Enter here and on line 34 . . . . ▶		[illegible]

rest Expense *(See page 17 of Instructions.)*

Home mortgage [illegible] . .	[illegible]	
Credit and charge cards		
Other (itemize) ▶ [illegible]	[illegible]	
Total interest expense (add lines 17 through 19). Enter here and on line 35 ▶		[illegible]

Contributions *(See page 17 of Instructions.)*

21 a Cash contributions for which you have receipts or cancelled checks		
b Other cash contributions (show to whom you gave and how much you gave) ▶		
22 Other than cash (see page 17 of Instructions for required statement)		
23 Carryover from prior years		
24 Total contributions (add lines 21a through 23). Enter here and on line 36 . . ▶		

Casualty or Theft Loss(es) *(See page 18 of Instructions.)*

25 Loss before insurance reimbursement .		
26 Insurance reimbursement		
27 Subtract line 26 from line 25. If line 26 is more than line 25, enter zero . . .		
28 Enter $100 or amount from line 27, whichever is smaller		
29 Total casualty or theft loss(es) (subtract line 28 from line 27). Enter here and on line 37 . ▶		

Miscellaneous Deductions *(See page 18 of Instructions.)*

30 Union dues		
31 Other (itemize) ▶		
32 Total miscellaneous deductions (add lines 30 and 31). Enter here and on line 38 ▶		

Summary of Itemized Deductions *(See page 19 of Instructions.)* **A**

33 Total medical and dental—from line 10 .	[illegible]	
34 Total taxes—from line 16	[illegible]	
35 Total interest—from line 20	[illegible]	
36 Total contributions—from line 24 . . .		
37 Total casualty or theft loss(es)—from line 29 .		
38 Total miscellaneous—from line 32 . .		
39 Add lines 33 through 38	[illegible]	
40 If you checked Form 1040, Filing Status box: 2 or 5, enter $3,400 . . . . 1 or 4, enter $2,300 . . . . 3, enter $1,700	[illegible]	
41 Subtract line 40 from line 39. Enter here and on Form 1040, line 33. (If line 40 is more than line 39, see the instructions for line 41 on page 19.) . . . . . ▶	[illegible]	

1040) 1980 **Schedule B—Interest and Dividend Income** Page 2

. Form 1040 (Do not enter name and social security number if shown on other side)

[illegible]

Your social security number [illegible]

Interest Income

If you received more than $400 in interest, complete Part I and Part III. Please see page 8 of the instructions to find out what interest to report. Then answer the questions in Part III, below. If you received interest as a nominee for another, or you received or paid accrued interest on securities transferred between interest payment dates, please see page 19 of the instructions.

Name of payer	Amount
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
Total interest income. Enter here and on Form 1040, line 9	2751

Part II Dividend Income

3 If you received more than $400 in gross dividends (including capital gain distributions) and other distributions on stock, complete Part II and Part III. Please see page 9 of the instructions. Write (H), (W), or (J), for stock held by husband, wife, or jointly. Then answer the questions in Part III, below. If you received dividends as a nominee for another, please see page 19 of the instructions.

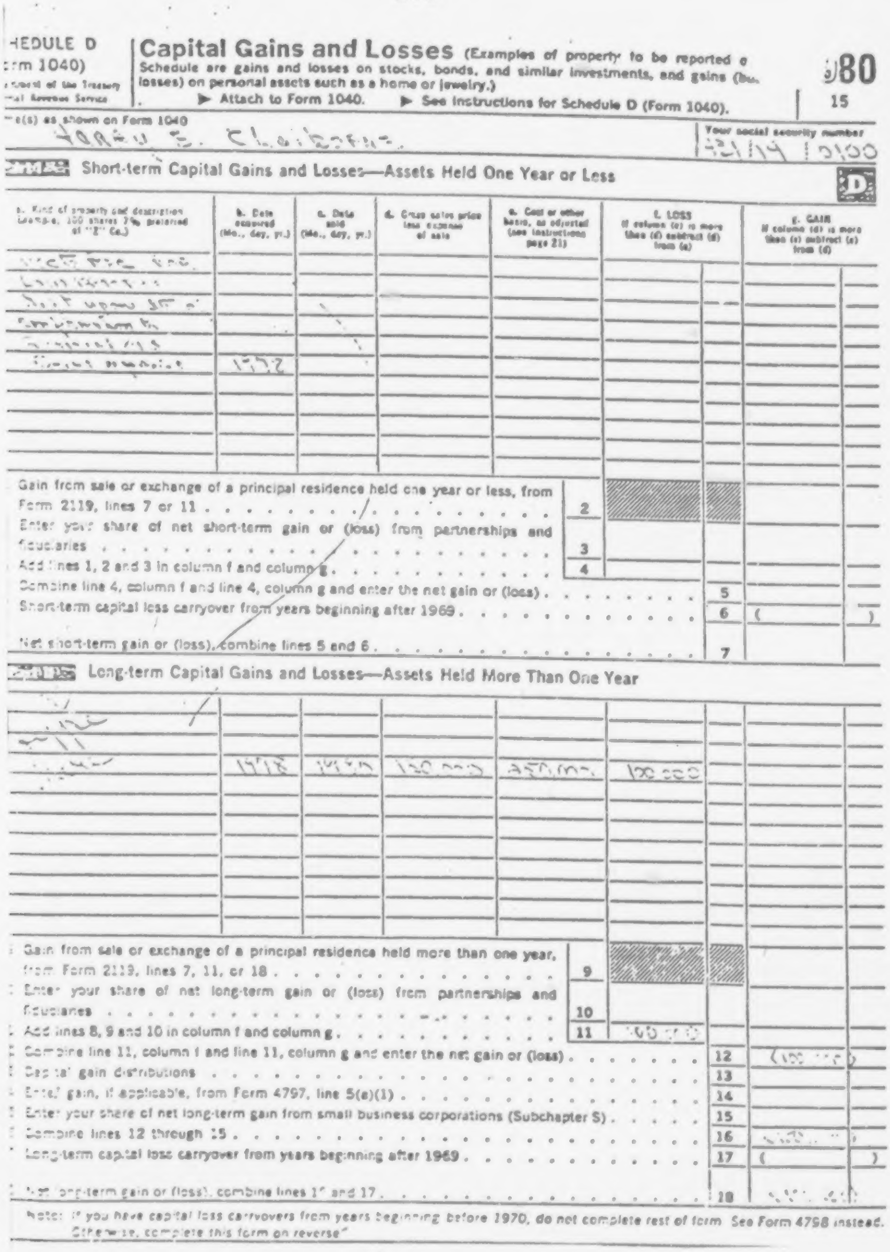
Name of payer	Amount
4 Total of line 3	
5 Capital gain distributions. Enter here and on line 13, Schedule D. See Note below	
6 Nontaxable distributions	
7 Total (add lines 5 and 6)	
8 Dividends before exclusion (subtract line 7 from line 4). Enter here and on Form 1040, line 10a	

Note: *If you received capital gain distributions for the year and you do not need Schedule D to report any other gains or losses, do not file that schedule. Instead, enter 40% of your capital gain distributions on Form 1040, line 15.*

Foreign Accounts and Foreign Trusts

you are required to list interest in Part I or dividends in Part II, if you had a foreign account or were a grantor of or a transferor to a foreign trust, you must answer both questions in Part III. Please see page 19 of the instructions.

	Yes	No
At any time during the tax year, did you have an interest in or a signature or other authority over a bank account, securities account, or other financial account in a foreign country (see page 19 of instructions)?		✓
Were you the grantor of, or transferor to, a foreign trust which existed during the current tax year, whether or not you have any beneficial interest in it? If "Yes," you may have to file Forms 3520, 3520-A, or 926.		✓



HEDULE D
rm 1040)
Department of the Treasury
Internal Revenue Service

Capital Gains and Losses

(Examples of property to be reported o Schedule are gains and losses on stocks, bonds, and similar investments, and gains (bu losses) on personal assets such as a home or jewelry.)

▶ Attach to Form 1040. ▶ See instructions for Schedule D (Form 1040).

980
15

e(s) as shown on Form 1040: Harry E. Claiborne

Your social security number: [illegible]

Part I Short-term Capital Gains and Losses—Assets Held One Year or Less

a. Kind of property and description (Example, 100 shares 7% preferred of "Z" Co.)	b. Date acquired (Mo., day, yr.)	c. Date sold (Mo., day, yr.)	d. Gross sales price less expense of sale	e. Cost or other basis, as adjusted (see instructions page 21)	f. LOSS If column (e) is more than (d) subtract (d) from (e)	g. GAIN If column (d) is more than (e) subtract (e) from (d)
[illegible]						
[illegible]						
[illegible]						
[illegible]						
[illegible]						
[illegible]	1972					

2 Gain from sale or exchange of a principal residence held one year or less, from Form 2119, lines 7 or 11 . . . 2

3 Enter your share of net short-term gain or (loss) from partnerships and fiduciaries . . . 3

4 Add lines 1, 2 and 3 in column f and column g . . . 4

5 Combine line 4, column f and line 4, column g and enter the net gain or (loss) . . . 5

6 Short-term capital loss carryover from years beginning after 1969 . . . 6 (   )

7 Net short-term gain or (loss), combine lines 5 and 6 . . . 7

Part II Long-term Capital Gains and Losses—Assets Held More Than One Year

a.	b.	c.	d.	e.	f. LOSS	g. GAIN
[illegible]						
[illegible]						
[illegible]	1978	1980	150,000	250,000	100,000	

9 Gain from sale or exchange of a principal residence held more than one year, from Form 2119, lines 7, 11, or 18 . . . 9

10 Enter your share of net long-term gain or (loss) from partnerships and fiduciaries . . . 10

11 Add lines 8, 9 and 10 in column f and column g . . . 11 100,000

12 Combine line 11, column f and line 11, column g and enter the net gain or (loss) . . . 12 (100,000)

13 Capital gain distributions . . . 13

14 Enter gain, if applicable, from Form 4797, line 5(a)(1) . . . 14

15 Enter your share of net long-term gain from small business corporations (Subchapter S) . . . 15

16 Combine lines 12 through 15 . . . 16 [illegible]

17 Long-term capital loss carryover from years beginning after 1969 . . . 17 (   )

18 Net long-term gain or (loss), combine lines 16 and 17 . . . 18 [illegible]

Note: If you have capital loss carryovers from years beginning before 1970, do not complete rest of form. See Form 4798 instead. Otherwise, complete this form on reverse.

Part III Summary of Parts I and II

Combine lines 7 and 18, and enter the net gain or (loss) here	19	(100,000)	
If line 19 shows a gain—			
a Enter 60% of line 18 or 60% of line 19, whichever is smaller. Enter zero if there is a loss or no entry on line 18	20a		
If the amount you enter on this line is other than zero, you may be liable for the alternative minimum tax. See Form 6251.			
b Subtract line 20a from line 19. Enter here and on Form 1040, line 14	20b		
If line 19 shows a loss—			
a Enter one of the following amounts: (i) If line 7 is zero or a net gain, enter 50% of line 19, (ii) If line 18 is zero or a net gain, enter line 19; or, (iii) If line 7 and line 18 are net losses, enter amount on line 7 added to 50% of the amount on line 18	21a	(50,000)	
b Enter here and enter as a loss on Form 1040, line 14, the smallest of: (i) The amount on line 21a, (ii) $3,000 ($1,500 if married and filing a separate return); or, (iii) Taxable income, as adjusted	21b	(3,000)	
Note: *If the loss on line 21a is more than the loss shown on line 21b, complete Part IV to determine post-1959 capital loss carryover from 1980 to 1981.*	▨	▨	▨

Part IV Computation of Post-1969 Capital Loss Carryovers from 1980 to 1981

(Complete this part if the loss on line 21a is more than the loss shown on line 21b)

Section A.—Short-term Capital Loss Carryover

Enter loss shown on line 7; if none, enter zero and skip lines 23 through 27—then go to line 28	22		
Enter gain shown on line 18. If that line is blank or shows a loss, enter zero	23		
Reduce any loss on line 22 to the extent of any gain on line 23	24		
Enter amount shown on line 21b	25		
Enter smaller of line 24 or 25	26		
Subtract line 26 from line 24	27		
Note: *The amount on line 27 is the part of your short-term capital loss carryover from 1980 to 1981 that is from years beginning after 1969.*	▨	▨	▨

Section B.—Long-term Capital Loss Carryover

Subtract line 26 from line 25. (Note: *If you skipped lines 23 through 27, enter amount from line 21b*)	28	3,000	
Enter loss from line 16; if none, enter zero and skip lines 30 through 33	29	100,000	
Enter gain shown on line 7. If that line is blank or shows a loss, enter zero	30	0	
Reduce any loss on line 29 to the extent of any gain on line 30	31	100,000	
Multiply amount on line 28 by 2	32	6,000	
Subtract line 32 from line 31	33	94,000	
Note: *The amount on line 33 is the part of your long-term capital loss carryover from 1980 to 1981 that is from years beginning after 1969.*	▨	▨	▨

☆ U.S. GOVERNMENT PRINTING OFFICE : 1980—O-313-085

2119
ment of the Treasury
nal Revenue Service

Sale or Exchange of Principal Residence

▶ See instructions on back.
▶ Attach to Form 1040.

1980
25

e: *Do not include expenses you are deducting as moving expenses on Form 3903.*

e(s) as shown on Form 1040: Harry E Claiborne

Your social security number: 431 14 0100

	Yes	No
(a) Date former residence sold ▶ 1 9-23-80		
(b) Have you ever postponed any gain on the sale or exchange of a principal residence?		X
(c) Have you ever claimed a credit for purchase or construction of a new principal residence? (If "Yes," see Form 5405.)		X
(d) If you were on active duty in the U.S. Armed Forces or outside of the U.S. after the date of sale of former residence, enter dates. From — to —		
(a) Date new residence was bought ▶ Built 1953		
(b) If new residence was constructed by you, date construction began ▶		
(c) Date you occupied new residence ▶ April 1980		
(d) If you answered "Yes," to 1(c), did anyone live in your new replacement residence before you did?		X
(e) Were both the old and new properties used as your principal residence?	X	
(f) Were any rooms in either residence rented out or used for business at any time? (If "Yes," see note in line 7 and attach computation.)		X

Computation of Gain and Adjusted Sales Price

Selling price of residence. (Do not include selling price of personal property items.)			3	725	000
Commissions and other expenses of sale			4	410	188
Amount realized (subtract line 4 from line 3)			5	314	812
Basis of residence sold	6	410 | 188			
Gain on sale (subtract line 6 from line 5). (If line 6 is more than line 5, enter zero and do not complete the rest of form.) If you bought another principal residence during the allowed replacement period or you elect the one time exclusion in Part III, continue with this form. Otherwise, enter the gain on Schedule D (Form 1040), line 2 or 9. If you intend to replace the residence within the allowed replacement period see instruction B.	7	314 | 812			

Note: *Do not include in line 7 the amount attributable to rented rooms or other business purposes; instead, report separately on Form 4797.*

Fixing-up expenses	8	—	
Adjusted sales price (subtract line 8 from line 5)	9	314	812

Computation of Gain to be Postponed and Adjusted Basis of New Residence

Cost of new residence	10	285	000
Gain taxable this year. (Subtract line 10 from line 9. Do not enter more than line 7.) If line 10 is more than line 9, enter zero. Enter any taxable gain on Schedule D (Form 1040), line 2 or 9. If you were 55 or over on the date of sale, see Part III	11		
Gain to be postponed (subtract line 11 from line 7)	12		
Adjusted basis of new residence (subtract line 12 from line 10)	13		

Computation of Exclusion, Gain to be Reported, and Adjusted Basis of New Residence

	Yes	No
(a) Were you 55 or over on date of sale?	X	
(b) Was your spouse 55 or over on date of sale? (If you answered "No" to 14(a) and 14(b), do not complete the rest of form.)		
(c) If you answered "Yes" to 14(a) or 14(b) did you own and use the property sold as your principal residence for a total of at least 3 years (except for short temporary absences) of the 5-year period before the sale? (If you are 65 or over, see instruction C.)	X	
(d) If you answered "Yes" to 14(c), do you elect to take the once in a lifetime exclusion of the gain on the sale? (If "Yes," check yes box and complete the balance of Part III. If "No," return to Part II, line 12 above.)	X	
(e) At time of sale, was the residence owned by: ☒ you, ☐ your spouse, ☐ both of you?		
(f) Social security number of spouse, at time of sale, if different from number on Form 1040 ▶ .... (Enter "none" if you were not married at time of sale.)		

Exclusion: Enter the smaller of line 7 or $100,000 ($50,000, if married filing separately)	15	100	000
Part of gain included (subtract line 15 from line 7)	16	214	812
Cost of new residence. If you did not buy a new principal residence, enter "None." Then enter the gain from line 16 on Schedule D (Form 1040), line 9, and do not complete the rest of Form 2119	17	285	000
Gain taxable this year. (Subtract the sum of lines 15 and 17 from line 9. The result cannot be more than line 15.) If line 17 plus line 15 is more than line 9, enter zero. Enter any taxable gain on Schedule D (Form 1040), line 9	18	0	
Gain to be postponed (subtract line 18 from line 16)	19	214	812
Adjusted basis of new residence (subtract line 19 from line 17)	20	60	188

structions

neral Instructions

A. Purpose of Form.—Use this form to ort any gain on the sale of your principal idence whether or not you replace it with ew principal residence. A taxable gain st be reported on Schedule D (Form 40). A loss is not deductible.

B. Postponement of Gain on Sale of Prin- al Residence.—Unless you elect to ex- e it according to Instruction C, gain n the sale of your principal residence y have to be postponed if:

(1) within 18 months before or after the sale, you buy and occupy another principal residence; or

(2) before the sale or within 18 months after the sale, you begin construction of a new principal residence and occupy it within 18 months before and 2 years after the sale.

Use Parts I and II to figure the gain that st be postponed.

Note: *If you are on active duty in the S. Armed Forces for more than 90 days living and working outside the United ates, after the date of sale of your old s dence, that time is not counted in figur- g your replacement period. However, this lacement period is never permitted to end beyond 4 years after the date of e.*

Any gain postponed in the year you sell r old residence is subtracted from the st of your new residence, giving you a er cost basis in your new residence. If sell the new residence in a later year d do not replace it, the postponed gain be taxed in that year. However, see in- uction C. If you do replace it, you may ntinue to postpone the gain.

Principal Residence.—Postponing gain plies only to the sale of your princi- residence. Usually, the home in which u live is your principal residence. For ample, this may be a house, houseboat, use trailer, cooperative apartment, or dominium.

If you have more than one residence, r principal residence is the one you sically occupy most of the time. If you ange your principal residence more than ce during the replacement period, only e last residence bought qualifies as r new residence for the purpose of post- ning gain, unless you sold the residence cause of a job relocation and are al- ed a moving expense deduction.

you plan to replace your residence but ve not done so by the time you file your urn, and the replacement period has not pired, attach Form 2119 to Form 1040 the year of sale, but complete lines a), 2(a), and 3 through 7 only. Indicate uestion 2(a) of the form that you have t yet bought a replacement residence.

you replace your residence after your urn is filed but within the replacement iod, and it costs you at least as much as e adjusted sales price of your old resi- ence, you should notify in writing the Di- ctor of the Internal Revenue Service nter where you filed your return and at- ch another Form 2119.

If your new residence costs less than the usted sales price of your old residence, you do not buy or start construction our new residence within 18 months m the date of sale of your old residence. u must file Form 1040X with attached hedule D and a new Form 2119 for the ar of sale showing the amount of the gain are required to report. Interest will be arged on the additional tax due on this n.

If you paid tax on the gain from the sale of your old residence, and buy and occupy a new residence within the replacement period, you should file Form 1040X with attached Form 2119 if you are entitled to a refund.

C. Exclusion of Gain on Sale of Residence.—If you sold your principal residence, you may elect to exclude from your income part or all of the gain on the sale if:

(1) you were 55 or over on the date of the sale;

(2) you owned and occupied your residence for periods totaling at least 3 years within the 5 year period ending on the date of sale; and

(3) neither you nor your spouse has previously elected this exclusion after July 26, 1978.

If you meet these requirements, you may elect to exclude up to $100,000 of your gain on the sale. If you are married filing separately, however, you may elect to exclude up to only $50,000 of gain on each separate return. Make the election in Part III of Form 2119. If you are 65 or over on the date of sale, you may substitute 5 of the last 8 years for 3 of the last 5 years.

The amount of gain excluded from your income is never taxed. The balance of the gain, in excess of the amount excluded, is taxed in the year of sale, unless you buy a new residence during the replacement period.

Generally, you may make or revoke an election to exclude gain on the sale of your principal residence at any time within 3 years from the due date, including extensions, of the return for the year the residence was sold. Use Form 1040X to amend your return.

If you and your spouse jointly hold the property and you file a joint return, only one of you must meet the age, ownership, and use requirements.

If the property is not jointly owned, only the spouse who owns the property must meet the requirements regardless of filing status on Form 1040.

If you are married at the time of sale, both you and your spouse must make the election to exclude the gain. If you do not file a joint return with that spouse, he or she must indicate consent to the election by writing in the bottom margin of Form 2119 or on an attached statement, "I consent to Part III election," and signing.

The election does not apply separately to you and your spouse. If you and your spouse make an election during marriage and later divorce, no further elections are available to either of you or to your new spouse if you remarry.

D. Consent of You and Your Spouse to Apply Separate Gain on Sale of Old Residence to Basis of New Residence.—Sometimes one spouse may own the old residence separately, but both spouses may own the new residence jointly (or vice versa). In such cases, the gain from the sale of the old residence on which tax is postponed and the resulting adjustment to the basis of the new residence may be divided between them. You and your spouse may make such a division only if:

(1) Both of you use the old and the new residences as your principal residence; and

(2) Both of you indicate consent in the bottom margin of Form 2119 or on an attached statement by writing: "We consent to have the basis of the new residence reduced by the gain on sale of the old residence." Both of you must sign this consent.

If both of you do not consent, you must determine the recognition of gain from the sale of the old residence in the regular way with no division.

Line-By-Line Instructions

Line 3. Selling Price of Residence.—Enter the amount of money you received, the amount of all notes, mortgages, or other liabilities to which the property was subject, and the fair market value of any other property you received.

Line 4. Commissions and Other Expenses of Sale.—This includes sales commissions, advertising expenses, attorney and legal fees, etc., incurred in order to sell the old residence. Loan charges, such as "loan placement fees" or "points" charged the seller, generally are selling expenses.

Line 6. Basis of Residence Sold.—This includes the original cost of the property, commissions, and other expenses incurred in its purchase, plus the cost of improvements. Subtract any depreciation allowed or allowable, any casualty loss taken on the residence, any energy credit taken, and the postponed gain on the sale or exchange of a previous principal residence. For more information, see Publication 551, Basis of Assets.

Line 8. Fixing-up Expenses.—These are decorating and repair expenses incurred only to assist the sale of the old property. They must have been incurred for work performed within 90 days before the contract to sell was signed, and must have been paid for not later than 30 days after the sale. Do not include capital expenditures for permanent improvements or replacements which are added to the basis of the property sold.

Note: *Fixing-up expenses are considered only in figuring adjusted sales price to determine the gain on which tax is postponed. They are not deductible in determining the actual profit on the sale of your old residence.*

Lines 10 and 17. Cost of New Residence.—The cost of your new residence includes one or more of the following:

(a) cash payments;

(b) the amount of any mortgage or other debt on the new residence;

(c) commissions and other purchase expenses you paid;

(d) construction costs (when you build your own residence) for the period beginning 18 months before and ending 2 years after the sale of the old residence; and

(e) if you buy rather than build your new residence, all capital expenditures made within 18 months before and 18 months after the sale of the old residence.

For more information, please get Publication 523, Tax Information on Selling Your Home, from most IRS offices.

Form **5695**
Department of the Treasury
Internal Revenue Service

Energy Credits

▶ Attach to Form 1040. ▶ See Instructions on back.

1980
34

Name(s) as shown on Form 1040
Harry E. Claiborne

Your social security number
431 | 14 | [illegible]

Enter in the space below the address of your principal residence on which the credit is claimed if it is different from the address shown on Form 1040.
[illegible]
[illegible]

Part I Fill in your energy conservation costs (but do not include repair or maintenance costs).
If you have an energy credit carryover from a previous tax year and no energy savings costs this year, skip to Part III, line 16.

1 Answer the following question: Was your principal residence substantially completed before April 20, 1977? . . . ☒ Yes ☐ No

2 If you checked the "NO" box, you CANNOT claim an energy credit for conservation cost. Do NOT fill in lines 1 through 7 of this form.

3 Energy Conservation Items:			
a Insulation	1a	3100	
b Storm (or thermal) windows or doors	1b		
c Caulking or weatherstripping	1c		
d A furnace replacement burner that reduces the amount of fuel used	1d		
e A device for modifying flue openings to make a heating system more efficient	1e		
f An electrical or mechanical furnace ignition system that replaces a gas pilot light	1f		
g A thermostat with an automatic setback	1g		
h A meter that shows the cost of energy used	1h		
2 Total (add lines 1a through 1h)	2	3100	
3 Maximum amount	3	$2,000	00
4 Enter the total energy conservation costs for this residence from your 1978 and 1979 Form 5695, line 2	4	0	
5 Subtract line 4 from line 3 (If line 4 is more than line 3, do not complete any more of this part. You cannot claim any more energy conservation credit for this residence.)	5	2000	
6 Enter the amount on line 2 or line 5, whichever is less	6	2000	
7 Enter 15% of line 6 here and include in amount on line 15 below	7	300	

Part II Fill in your renewable energy source costs (but do not include repair or maintenance costs).
If you have an energy credit carryover from a previous tax year and no energy savings costs this year, skip to Part III, line 16.

8 Renewable Energy Source Items:			
a Solar	8a		
b Geothermal	8b		
c Wind	8c		
9 Total (add lines 8a through 8c)	9		
10 Maximum amount	10	$10,000	00
11 Enter the total renewable energy source costs for this residence from your 1978 Form 5695, line 5 and 1979 Form 5695, line 9	11		
12 Subtract line 11 from line 10 (If line 11 is more than line 10, do not complete any more of this part. You cannot claim any more renewable energy source cost credit for this residence.)	12		
13 Enter amount on line 9 or line 12, whichever is less	13		
14 Enter 40% of line 13 here and include in amount on line 15 below	14		

Part III Fill in this part to figure the limitation

15 Add line 7 and line 14. *If less than $10, enter zero*	15	300	
16 Enter your energy credit carryover from a previous tax year	16		
17 Add lines 15 and 16	17	300	
18 Enter the amount of tax shown on Form 1040, line 37	18	[illegible]	
19 Add lines 38 through 44 from Form 1040 and enter the total	19		
20 Subtract line 19 from line 18. If zero or less, enter zero	20	[illegible]	
21 Residential energy credit. Enter the amount on line 17 or line 20, whichever is less. Also, enter this amount on Form 1040, line 45	21	300	

General Instructions

Two energy credits make up the residential energy credit, each with its own conditions and limits. These credits are based on: (1) Costs for home energy conservation, and (2) Costs for renewable energy source property.

The credit is based on the cost of items installed in your principal residence after April 19, 1977, and before January 1, 1986. The cost of the items includes the cost of installing them.

Qualified expenditures financed with nontaxable Federal, State, or other grants cannot be used to figure the energy credit.

Purpose.—Use this form to figure your residential energy credit if you had qualified energy saving items installed in your principal residence. The instructions below list conditions you must meet to take the credit. **If you have an energy credit carryover from the previous tax year and no energy saving costs this year, fill in only Part III of the form. Attach Form 5695 to your tax return. For more information, please get Publication 903, Energy Credits for Individuals.**

What is your principal residence?—To qualify as your principal residence, your residence must meet all of the conditions below.

- **It must be the home where you and your family live (you may own it or rent it from another person).**
- **It must be in the United States.**

A summer or vacation home does not qualify.

If you live in a condominium or cooperative housing corporation dwelling unit, it may qualify. Please get Publication 903 for more details.

If you and another person own and use different principal residences and share the cost of qualified energy conservation property or renewable energy source property intended for joint use, each of you may claim the energy credit as a separate taxpayer. Divide the amount of qualified expense among each person on the basis of their share of the contribution to the total cost. This type of expenditure is effective if made after April 1, 1980.

For energy conservation items to qualify, your principal residence must have been substantially completed before April 20, 1977. A dwelling unit is considered substantially completed when it can be used as a personal residence even though minor items remain unfinished.

Note: You may claim the maximum credit on each principal residence you live in during the tax year. See the instructions for figuring the credit for more than one principal residence.

What are energy saving items?—You can take the credit for two kinds of energy saving items: energy conservation items and renewable energy source items.

Energy conservation items are limited to:

- insulation (fiberglass, cellulose, etc.) for ceilings, walls, floors, roofs, water heaters, etc.
- storm (or thermal) windows or doors for the outside of your residence.
- caulking or weatherstripping for windows or doors for the outside of your residence.
- a furnace replacement burner that reduces the amount of fuels used.
- a device for modifying flue openings to make a heating system more efficient.
- an electrical or mechanical furnace ignition system that replaces a gas pilot light.
- a thermostat with an automatic setback.
- a meter that shows the cost of energy used.

To take the credit for an energy conservation item, you must:

- install them in your principal residence which was substantially completed before April 20, 1977,
- be the first one to use the item, and
- expect it to last at least 3 years.

The credit for energy conservation items cannot be more than $300.

Renewable energy source items include solar, wind, and geothermal energy items which heat or cool your principal residence or provide hot water or electricity for it.

Examples of solar energy items include:

- collectors,
- rockbeds,
- heat exchangers, and
- solar panels installed on roofs (including those installed as a roof or part of a roof).

An example of an item that uses wind energy is a windmill that produces energy in any form (usually electricity) for your residence.

To take the credit for a renewable energy source item, you must:

- be the first one to use the item, and
- expect it to last at least 5 years.

The credit for renewable energy source items cannot be more than $4,000.

What items are NOT eligible for the energy credit?—You cannot take the credit for items such as the following:

- carpeting;
- drapes;
- wood paneling;
- wood or peat-burning stoves;
- hydrogen fueled residential equipment;
- siding for the outside of your residence;
- heat pump (both air and water);
- fluorescent replacement lighting system;
- replacement boilers and furnaces, and
- swimming pools used to store energy.

Figuring the credit for more than one principal residence.—You can take the maximum credit for each principal residence you live in. If you use all of your credit for one residence and then move, you may take the maximum credit amount on your next residence.

For example, if you sold your principal residence in May of 1980 and bought another in June, you would be entitled to take up to $300 credit on each residence for energy conservation items.

To figure your allowable 1980 energy credit for more than one principal residence, follow these instructions:

(1) Fill out Part I or II on a separate Form 5695 for each principal residence.

(2) Enter the total of all parts on line 15 of one of the forms.

(3) In the space above line 15, write "More than one principal residence."

(4) Attach all forms to your return.

Caution: *You should keep a copy of each Form 5695 that you file for your records. For example, if you sell your principal residence, you will need to know the amount of the credit claimed in prior tax years. You must reduce the basis of your principal residence by the amount of energy credit taken against your tax, if the items for which the credit is taken are a proper increase to the basis.*

What to do with an energy credit when it's more than your tax.—**If your credit for this year is more than your tax minus certain other credits, you can carry over the excess energy credit to the following tax year.**

Carryover for tax year in which the alternative minimum tax applies.—**If the alternative minimum tax applies, you may not receive the full tax benefit for the energy credit claimed during the tax year. If so, the amount of the energy credit benefit you lose is eligible for carryover. See Publication 525, Taxable and Nontaxable Income, for more details.**

Specific Instructions

Part I, lines 1a through 1h (insulation, storm (or thermal) windows or doors, caulking or weatherstripping, etc.).—Enter your energy conservation costs only for this tax year. Count the cost of the item and its installation in or on your principal residence. Do not include the cost of repairs or maintenance for energy conservation items.

Part I, line 4.—Enter your total energy conservation costs from 1978 and 1979 for this principal residence. If you had energy conservation costs in the previous tax year but could not take a credit because it was less than $10, enter zero.

Part II, lines 8a through 8c (solar, geothermal, and wind).—Enter your renewable energy source costs only for this tax year. Count the cost of the item and the cost of labor for its assembly, preparation, and installation in connection with your principal residence. Do not include the cost of repairs or maintenance for renewable energy source items.

Part II, line 11.—Enter your total renewable energy source costs from 1978 and 1979 for this principal residence. If you had renewable energy source costs in the previous tax year but could not take a credit because it was less than $10, enter zero.

Part III.—The amount of your energy credit is limited to your tax less other credits. If you have an amount on line 17 which is more than line 20, you can carry over the excess energy credit to the next tax year.

Part III, line 16.—If your tax for the previous tax year was less than the amount of energy credit, you have a credit carryover to this tax year. Enter the carryover amount on this line.

☆ U.S. GOVERNMENT PRINTING OFFICE : 198—O-313-317 66-0875140

1980 Supplement to Form / Schedule / Statement **STATEMENT BE3** 33

[illegible] Rancho Rd.

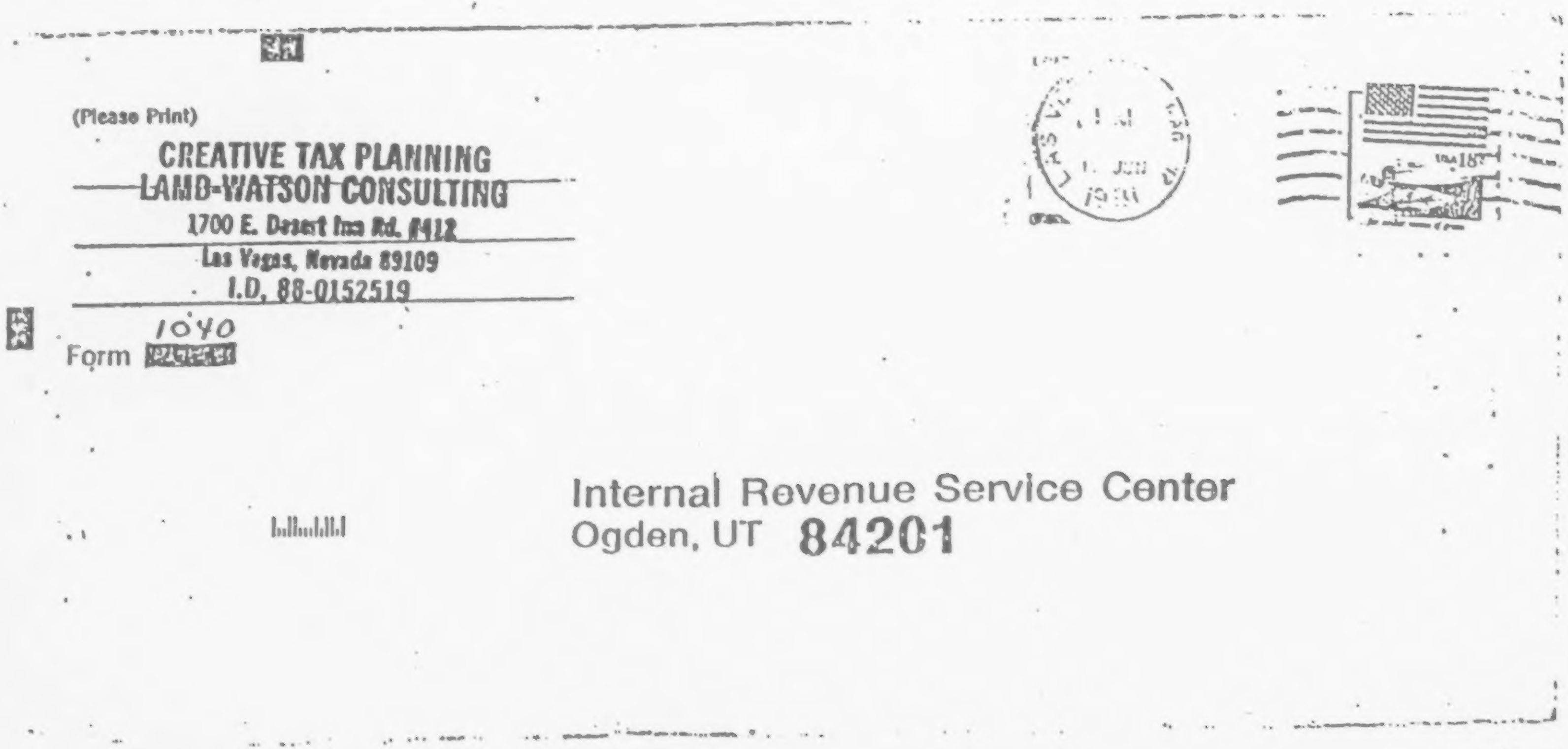
Name [illegible]

Sale or Exchange of Principal Residence					
Part I Line 3					
(3) Selling price - Land		$ 275,000			
- Home		450,000			
		$ 725,000			
(4) Comm[illegible] of Sale		− 19,706			
" " "		− 27,682			
(5)		$ 677,612		677,612	
(6) Basis of Residence:					
Purch land 1951 (Gift-[illegible])		$ 8,100			
Built House on land	1953	65,000			
Stables & [illegible]	1956	6,400			
Remodel - [illegible]	1958	16,500			
" [illegible]	1960	25,000			
" Entire house	1976	37,800			
" Brick Street	1977	14,210			
Well Drilled	1954	1,100			
Pump Inst	"	640			
" "	1963	1,430			
Electric Sprinkler Pump	1970	3,140			
Pool	1958	15,800			
Guest House	1965	17,500			
Rec Bldg	1969	12,800			
Add'l Room in Rec	1973	4,500			
Tennis Court	1962	1,150			
Landscap	1973	6,300			
" & [illegible]		7,000			
Sprinklers-[illegible]		[illegible]			
Sidewalks/Fence		[illegible]			
Patio & [illegible]		2,800			
[illegible]		—			
[illegible]		[illegible]			
[illegible]		2,600			
Carpeting		9,150			
Drapes		[illegible]			
Fixtures		[illegible]			
[illegible]		[illegible]			

[illegible]　Supplement to { Form [illegible] Schedule ____ Statement ____　**STATEMENT BL-3**

Name ____

(6). Cost				
Rent (Temp. [illegible])	600.			
[illegible] & [illegible]	4100			
[illegible]	7000			
[illegible] & Panel, trim.	5100			
Insulation	3100			
Remodeling [illegible] etc	15000			
Cost of Land (2½ acres)	13,500			
Survey	600			
Built Riverbank on Land	5,000			
Well Drilled	1,000			
2½ acres [illegible]	7100			
Fencing	3250			
Graded	1400			
Extras	3100			
Price of Res Sold.	362,800		362800	
(7) Gain on Sale			314,812	
(8) Cost of New Resid			285,000	
(9) Gain taxable this year			29,812	
([illegible] * is 11925 to Cap Gain				
[illegible]				
would be $ 255,128.).				
677,612 Net after Commission				
362 800 Cost & Improvements				
314812				



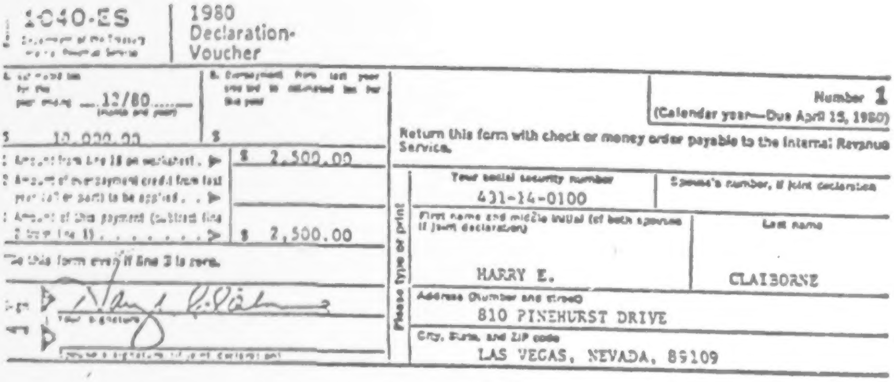
(Please Print)

CREATIVE TAX PLANNING
LAMB-WATSON CONSULTING
1700 E. Desert Inn Rd. #412
Las Vegas, Nevada 89109
I.D. 88-0152519

1040
Form

Internal Revenue Service Center
Ogden, UT 84201

House Exhibit #28



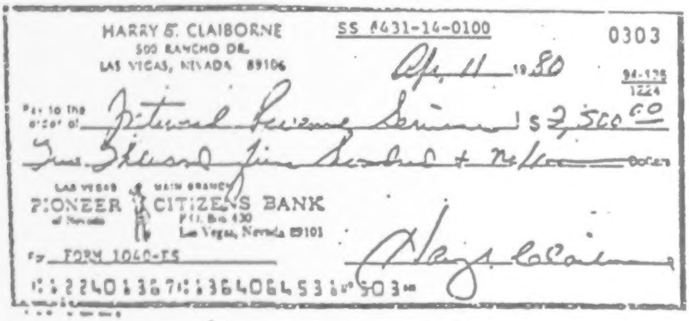
1040-ES

1980
Declaration-
Voucher

year ending 12/80 (month and year) $ 10,000.00	$	Number 1 (Calendar year—Due April 15, 1980) Return this form with check or money order payable to the Internal Revenue Service.
1 Amount from line 18 on worksheet	$ 2,500.00	Your social security number: 431-14-0100
2 Amount of overpayment credit from last year (all or part) to be applied		Spouse's number, if joint declaration
3 Amount of this payment (subtract line 2 from line 1)	$ 2,500.00	First name and middle initial (of both spouses if joint declaration): HARRY E.
File this form even if line 3 is zero.		Last name: CLAIBORNE
Sign here: Your signature		Address (Number and street): 810 PINEHURST DRIVE
Spouse's signature (if joint declaration)		City, State, and ZIP code: LAS VEGAS, NEVADA, 89109

Please type or print

House Exhibit #29



HARRY E. CLAIBORNE
500 RANCHO DR.
LAS VEGAS, NEVADA 89106

SS #431-14-0100

0303

Apr. 11 1980

94-175
1224

Pay to the order of Internal Revenue Service $ 2,500.00

Two Thousand Five Hundred + no/100 Dollars

LAS VEGAS MAIN BRANCH
PIONEER CITIZENS BANK of Nevada
P.O. Box 430
Las Vegas, Nevada 89101

For FORM 1040-ES

Harry Claiborne

1:122401367:1364064531" 303

Pd 4/11/80	2500.00
Overpayment 1979	4,182.41
W.H. Tax 1980	17,847.96
Total	24,530.37

This is more than Last yrs. Tax

Gov't Exhibit 30

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
200 LAS VEGAS BOULEVARD SOUTH
LAS VEGAS, NEVADA 89101

CHAMBERS OF
JUDGE HARRY E. CLAIBORNE
[illegible]

original in FR personal file
Sept 1980
mo

Dear Frank.

Would you please try to work out a way that I could get my money from Sid's estate. For the first time in my life I am desperately in need of money.

Regards,

Harry

House Exhibit #30

RH
8-31-8[illegible]

Creative
Tax
Planning

Consulting Services:

- Accounting
- Bookkeeping
- Payrolls
- Union Reports
- Computer Services
- Income Tax
  - —Corporation
  - —Partnership
  - —Individual
- Tax Audit Assistance
- Tax Planning
- Investments
- Business Consulting & Management
- Insurance & Bonding
  - —Life
  - —Health
  - —Casualty
  - —Homeowners
  - —Business
  - —Auto
  - —Group

Tax Deferrals

- Pension Plans
- I.R.A. Plans
- Profit Sharing
- Keogh Plans
- Employee Thrift
- Estate & Trust Planning
- Notary Public

Tax Sheltered Investments

April 6, 1981

Judge Harry Claiborne
300 Las Vegas Blvd. South
Las Vegas, Nevada 89101

Dear Judge Claiborne,

Attached is a form for determining the cost basis of the property you sold. First we will treat the sale of your home as one transaction and the sale of the acerage as a separate transaction.

On your home we should be able to work up a figure that would cause that transaction to be tax free since you qualify for the $100,000 tax free gain on the sale of your present residence. The sale of the land will be taxed as a long term capital gain on your profit and you will be allowed to pay the tax as you receive the increase.

The possibility of taking a loss on your business looks good. We will assemble supporting information with your help to determine the amount of this loss.

On the form we start with the purchase price #1, then the additional costs of purchase #2. Then make a list of all improvements #3. This should be a very extensive list, and last the cost of selling #4. Most of this information will come from your closing statement.

I assume from our discussion that you wish to have your entire income tax return completed by us. In that case we need all your interest expense, medical expense, copies of your tax returns for the tax years 1973 through 1979 and any business expense you incurred in connection with your practice prior to your appointment.

Sincerely,

Jerry D. Watson, C.L.U.
JDW:ll

Attachments: (2)

House Exhibit #31

[illegible] Watson Consulting

1700 EAST DESERT INN ROAD • SUITE 412 • LAS VEGAS, NEVADA 89109 • [illegible]

GOVT EX 47

Department of the Treasury
Internal Revenue Service

to File U.S. Individual Income Tax Return

1980

Please Print or Type	Name (If joint return, give first names and initials of both) Last name Harry E. Claiborne
	Present home address (Number and street, including apartment number, or rural route) 1908 Plaza de la Cruz
	City, town or post office, State, and ZIP code Las Vegas, Nevada 89102
	Your social security number 431 14 0100
	Spouse's social security no.

Note: File this form with the Internal Revenue Service Center where you must file your income tax return and pay the amount shown on line 6 below. This is not an extension of time for payment of tax. The law requires that a penalty be charged for late payment of tax unless you show reasonable cause for not paying the tax when due (see Instruction G).

If you expect to file a 1980 gift tax return (Form 709) due following the close of the fourth calendar quarter of 1980, check this box ☐

I request an automatic 2-month extension of time until June 15, 1981, in which to file Form 1040 for the calendar year 1980 (or if a fiscal year return until .... 19...... for the tax year beginning .... 1980, and ending .... 1981).

1 Total income tax you expect to owe for 1980 . . . . Note: You must enter an amount on line 1. If you do not expect to owe tax, enter zero (0). You may estimate the amount.		42,847.96
2 Federal income tax withheld	17,847.96	
3 1980 estimated tax payments (include 1979 overpayment allowed as a credit) . .	4,182.41	
4 Other payments (see instruction E)		
5 Total (add lines 2, 3, and 4)		22,030.37
6 Income tax balance due (subtract line 5 from line 1). Pay in full with this form . . . . . ▶		20,817.59
7 Total gift tax you expect to owe for 1980 (see instruction E). Note: This is the amount you expect to owe for the gift tax return due following the close of the fourth calendar quarter of 1980 . . . . . ▶		

Signature and Verification

If Prepared by Taxpayer.—Under penalties of perjury, I declare that I have examined this form, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete.

Harry E. Claiborne .... April 13, 1981
Your signature Date

....
Spouse's signature (if filing jointly, BOTH must sign even if only one has income) Date

If Prepared by Someone Other Than Taxpayer.—Under penalties of perjury, I declare that I have examined this form, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete; that I am authorized to prepare this form; and that I am:

- ☐ A member in good standing of the bar of the highest court of (specify jurisdiction) ....
- ☐ A certified public accountant qualified to practice in (specify jurisdiction) ....
- ☐ A person enrolled to practice before the Internal Revenue Service.
- ☐ An authorized agent holding a power of attorney. (You need not send in the power of attorney unless requested.)
- ☐ A person in close personal or business relationship to the taxpayer who cannot sign this form because of illness, absence, or other good cause. My relationship to the taxpayer and the reasons why the taxpayer cannot sign this form are ....

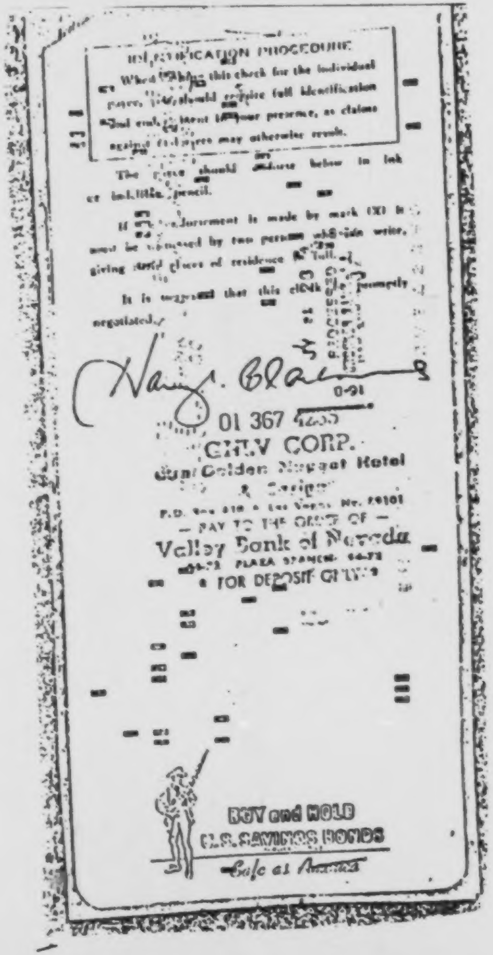
....

....
Signature of preparer other than taxpayer Date

See instructions on back.

Form 4868 (1980)

House Exhibit #32



IDENTIFICATION PROCEDURE

When cashing this check for the individual payee, you should require full identification and endorsement in your presence, as claims against endorsers may otherwise result.

The payee should endorse below in ink or indelible pencil.

If the endorsement is made by mark (X) it must be witnessed by two persons who can write, giving their places of residence in full.

It is suggested that this check be promptly negotiated.

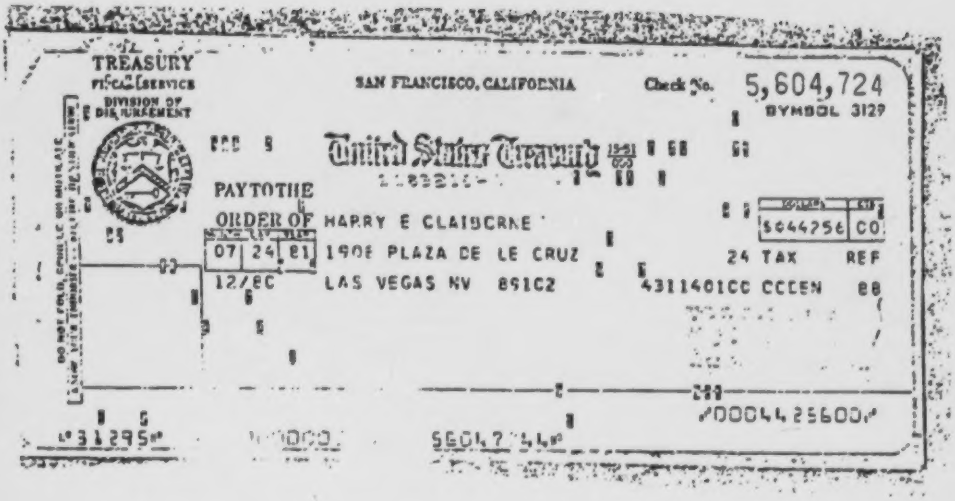
Harry . Cla

0-91

01 367 4253

GHLV CORP.
dba/Golden Nugget Hotel
& Casino
P.O. Box 610 • Las Vegas, Nev. 89101
— PAY TO THE ORDER OF —
Valley Bank of Nevada
PLAZA BRANCH 94-73
FOR DEPOSIT ONLY

BUY and HOLD
U.S. SAVINGS BONDS
—Safe as America



TREASURY
FISCAL SERVICE
DIVISION OF
DISBURSEMENT

SAN FRANCISCO, CALIFORNIA

Check No. 5,604,724
SYMBOL 3129

United States Treasury

PAY TO THE
ORDER OF HARRY E CLAIBORNE

$044256	00

07 24 81
12/80

1908 PLAZA DE LE CRUZ
LAS VEGAS NV 89102

24 TAX REF
431140100 000EN 88

000044256 00

31295 0000 5604724

House Exhibit #33

III.D

IN THE SENATE OF THE UNITED STATES

Sitting As A Court of Impeachment

In re)
)
IMPEACHMENT OF) Motion #4
JUDGE HARRY E. CLAIBORNE)

MEMORANDUM IN SUPPORT OF MOTION TO ACCEPT AS SUBSTANTIVE EVIDENCE CERTAIN TESTIMONY AND DOCUMENTS

On August 10, 1984, Judge Harry E. Claiborne was convicted by a jury in the United States District Court for the District of Nevada of willfully failing to report income on his 1979 and 1980 tax returns. During the trial, the only issue in dispute was whether Judge Claiborne intentionally filed erroneous tax returns for both years. Counsel for Judge Claiborne acknowledged in his opening statement to the jury:

> [T]he only issue that we see from the defense point of view in this adversary system is whether or not Judge Claiborne intentionally filed an incorrect return.

Opening Statement of Oscar Goodman, Transcript of Proceedings at 24 (August 2, 1984).

The defense did not dispute any of the evidence presented by the prosecution to establish that Judge Claiborne's tax returns for each year were incorrect as to a material matter. Thus, Judge Claiborne did not controvert the testimony of several prosecution witnesses who established the difference between Judge Claiborne's actual income and his reported income.

Similarly, Judge Claiborne raised no objection to the authenticity of more than 30 government exhibits which were introduced to show the fact and the amount of the unreported income.

In an effort to streamline the proof during any impeachment trial required by the Senate, the House of Representatives attempted to reach an agreement with Judge Claiborne on these undisputed issues and documents. On August 25, 1986, the House of Representatives, through Special Counsel, tendered a proposed stipulation to Counsel for Judge Claiborne (a copy of the draft stipulation is attached to the Pretrial Statement of the House of Representatives). Each paragraph of the stipulation recited a fact adduced at trial through undisputed testimony or sought to establish the authenticity of a document admitted at trial without objection. On September 3, 1986, Judge Claiborne, through his Counsel, refused without explanation to sign the proffered stipulation and indicated that there was no stipulation that he would accept.

In this motion, the House of Representatives requests the Senate to accept as substantive evidence the undisputed testimony and exhibits that were the basis of the proferred stipulation. The motion seeks to provide the Senate with a legitimate means to avoid wasting countless hours of trial questioning witnesses on undisputed and technical matters. Specifically, the motion requests that the Senate accept as substantive evidence the prior sworn testimony of 13 witnesses and the authenticity of 33 documents admitted in evidence at the criminal trial without objection.

The Senate has the power to accept the prior sworn testimony and documents as substantive evidence. Sitting as a court of impeachment, the Senate has the inherent authority to establish fair and expeditious procedures for the adjudication of facts. As the Senate Rules reflect, this authority includes a determination of what evidence shall be admitted. Rules of Procedure and Practice in the Senate when Sitting on Impeachment Trials, Rule VII.

The Senate already has determined that it may resolve the allegations raised in the Articles of Impeachment on the basis of a transcript of the testimony received by a special committee of Senators appointed pursuant to Senate Impeachment Rule XI. S. Res. 481, 99th Cong., 2d Sess. (August 14, 1986). Thus, the Senate has acknowledged that live testimony is not necessary to render a judgment in an impeachment proceeding. It is pointless for the committee to produce another printed record regarding purely undisputed and technical matters when such a record already exists from Judge Claiborne's criminal trial.

The testimony of each of these witnesses was under oath. It was subject to full cross-examination by the defense. As a result, the acceptance of the prior testimony and exhibits will not work any unfairness to Judge Claiborne. It will, however, allow the Senate to avoid hours of trial on technical matters and the need to bring numerous witnesses to Washington, at considerable cost to the Senate and inconvenience to the parties involved.

Respectfully submitted,

UNITED STATES HOUSE OF REPRESENTATIVES

By Nicholas D. Chabraja

Managers of the House of Representatives

Peter W. Rodino, Jr.
Robert W. Kastenmeier
Romano L. Mazzoli
William J. Hughes
Dan Glickman

Hamilton Fish, Jr.
Henry J. Hyde
Thomas N. Kindness
Michael DeWine

Impeachment Trial Staff

Nicholas D. Chabraja, Special Counsel
David W. DeBruin, Associate Special Counsel

House Judiciary Committee Staff
Participating in Impeachment Trial Preparation

M. Elaine Mielke, General Counsel
Alan F. Coffey, Jr., Associate Counsel
Judith Bailey, Counsel
Daniel M. Freeman, Counsel
Gary G. Goldberger, Counsel
Warren S. Grimes, Counsel
Joseph V. Wolfe, Counsel
Jonathan R. Yarowsky, Counsel

III.E

IN THE SENATE OF THE UNITED STATES

Sitting As A Court Of Impeachment

In re	)	
	)	
	)	Motion #5
	)	
IMPEACHMENT OF JUDGE	)	
HARRY E. CLAIBORNE	)	

MOTION TO ACCEPT PRIOR ADMISSIONS OF JUDGE CLAIBORNE AS SUBSTANTIVE EVIDENCE

The House of Representatives, through its Managers and Counsel, respectfully moves the Senate, sitting as a court of impeachment, to accept the prior admissions of Judge Claiborne as substantive evidence. These admissions include, but are not necessarily limited to the following:

1. that he continued to receive fee income on a regular basis after he became a judge. Transcript of Proceedings (second trial), 1009 (August 7, 1984).

2. that he received a check from James J. Brown dated January 5, 1979, in the amount of $3,381.10, which he deposited at the Pioneer Citizens Bank. Transcript of Proceedings (first trial), 3146 (April 2, 1984).

3. that he received a check from James J. Brown dated January 19, 1979, in the amount of $17,500.00, which he deposited at the Pioneer Citizens Bank. Id.

4. that he received a check from James J. Brown dated January 26, 1979, in the amount of $833.33, which he cashed at the Horseshoe Club. Id.

5. that he received a check from James J. Brown dated January 26, 1979, in the amount of $84.38, which he deposited at the Pioneer Citizens Bank. Id.

6. that he received a check from James J. Brown dated February 15, 1979, in the amount of $1,106.66, which he cashed at the Horseshoe Club. Id.

7. that he received a check from James J. Brown dated July 19, 1979, in the amount of $7,000.00, which he deposited at the Pioneer Citizens Bank. Id., at 3147

8. that he received a check from James J. Brown dated August 31, 1979, in the amount of $2,905.90, which he cashed at the Horseshoe Club. Id.

9. that he received a check from James J. Brown dated November 13, 1979, in the amount of $3,011.56, which he cashed at the Horseshoe Club. Id.

10. that he received a check from James J. Brown dated November 13, 1979, in the amount of $250.00, which he deposited at the Pioneer Citizens Bank. Id.

11. that he received a check from Annette Quintana dated January 16, 1979, in the amount of $1,000.00, which he cashed at the Holiday Hotel in Reno, Nevada. Id., at 3148.

12. that he received a check from Annette Quintana dated February 12, 1979, in the amount of $1,000.00, which he could not determine the manner in which it was negotiated. Id.

13. that he received a check from Annette Quintana dated March 9, 1979, in the amount of $1,000.00, which he could not determine the manner in which it was negotiated. Id.

14. that he received a check from Annette Quintana dated April 12, 1979, in the amount of $1,000.00, which he deposited at the Pioneer Citizens Bank. Id.

15. that he received a check from Annette Quintana dated May 14, 1979, in the amount of $1,000.00, which he cashed at the Horseshoe Club. Id., at 3149.

16. that he received a check from James Brown dated August 6, 1978, in the amount of $803.30, which he believed he deposited in the First National Bank. Id., at 3168.

17. that he received a check from James Brown dated November 7, 1980, in the amount of $7,100.19, which he believed he deposited in the First National Bank. Id.

18. that he received a check from Peter Echeverria on January 3, 1980, in the amount of $42,452.34, which he deposited in the Pioneer Citizens Bank. Id., at 3169.

19. that he received a check from Hochman, Salkin and DeRoy dated August 15, 1980, in the amount of $37,500.00, which he cashed at the Golden Nugget Casino. Id., at 3169-3170.

20. that he maintained a financial diary, identified at both trials as Defendant's Exhibit 47, in which he recorded his fee collections. Transcript of Proceedings (second trial), 857-858 (August 6, 1984).

21. that the entries in the diary -- which reflect legal fees of $41,073.91 for 1979 and $87,912.43 for 1980 -- are an "absolutely" accurate record of fees that Judge Claiborne received. Id., at 859, 863.

22. that, when he was in private practice, it was Judge Claiborne's regular practice to have his checks from fees deposited in a bank account. Id., at 1008 (August 7, 1984).

23. that, for all the years in which Mr. Joseph C. Wright was his accountant, it was Judge Claiborne's practice to deposit checks from legal fee income into his bank account. Transcript of Proceedings (first trial), 3280 (April 3, 1984).

24. that a cash transaction would be much easier to conceal than a check transaction. Id., at 3281.

25. that Mr. Joseph C. Wright, Judge Claiborne's accountant for many years and the preparer of the 1979 return, is "highly qualified and exceedingly honest." Id., at 3167 (April 2, 1984).

26. that he received $41,072.93 in legal fee income for 1979, but reported only $22,332.87 of those fees. Opening Statement of Oscar B. Goodman, Transcript of Proceedings, 23-24 (August 2, 1984).

27. that the 1979 income tax return "in fact ... was an incorrect report." Id.

28. that the 1980 income tax return was "virtually ... an abortion or an aberration." Id., at 34.

29. that the only issue as to whether Judge Claiborne was guilty of a criminal offense was whether or not he "intentionally filed an incorrect return." Id., at 24.

The reasons in support of this motion are set forth in the accompanying Memorandum in Support of Motion to Accept Prior Admissions of Judge Claiborne, filed herewith.

Respectfully submitted,

THE UNITED STATES
HOUSE OF REPRESENTATIVES

By Nicholas D. Chabraja

Managers of the House of Representatives

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Warren S. Grimes, Counsel
Joseph V. Wolfe, Counsel
Jonathan R. Yarowsky, Counsel

III.F

IN THE SENATE OF THE UNITED STATES
SITTING AS A COURT OF IMPEACHMENT

In re)
)
IMPEACHMENT OF) Motion #5
)
JUDGE HARRY E. CLAIBORNE)

MEMORANDUM IN SUPPORT OF MOTION TO ACCEPT PRIOR ADMISSIONS OF JUDGE CLAIBORNE

The admissions made by Judge Claiborne in his trial testimony and by his counsel in argument should be accepted as substantive evidence in his impeachment trial. Judge Claiborne's admissions were made under oath. His counsel's statements were made in open court before the judge and jury. As such, the admissions are relevant, material, reliable and trustworthy, and should be accepted by the Senate as substantive evidence.

The Rules of Procedures & Practice In the Senate When Sitting on Impeachment Trials contain no specific standard for when evidence is admissible in an impeachment trial. The Rules only imply that the general standard used in courts across the country that evidence be relevant and material applies. (Rule VII).

There is no doubt that the admissions made by Judge Claiborne and his counsel during his trial are relevant and material to the impeachment trial. The admissions relate to the underreporting of income that are the focus of the Articles of Impeachment.

Although the Federal Rules of Evidence are not binding on the Senate, they do offer guidance on what types of evidence are admissible. An admission by a party is permitted as evidence, regardless of whether it is made under oath. (Federal Rules 801(d)(2)) "No guarantee of trustworthiness is required in the case of an admission." Advisory Committee on Proposed Rules, Note accompanying Federal Rule 801(d)(2). The theory behind this statement is that a party would not make an admission unless it was true, so the admission can be assumed to be trustworthy and reliable.

When the admission is made at a trial by a witness such as Judge Claiborne who was sworn to tell the truth, the argument that the admission is reliable and trustworthy becomes even stronger.

Since Judge Claiborne's admissions are relevant, material reliable and trustworthy, they should be accepted as substantive evidence. Accepting the sworn admissions as substantive evidence will also avoid the need to repeat testimony on undisputed points --thereby not wasting the time of the Senate.

The admissions made by Judge Claiborne's counsel during the trial should also be binding on Judge Claiborne in this impeachment. These admissions are relevant, material, reliable and trustworthy. An in-court admission by an attorney generally is held by courts to bind the client, even though the attorney is not sworn as a witness. See McCormick on Evidence, sec. 267, p. 791 (3d ed. 1984).

Respectfully submitted,

THE UNITED STATES
HOUSE OF REPRESENTATIVES

By Nicholas D. Chabraja

Managers of the House of Representatives

Peter W. Rodino, Jr.
Robert W. Kastenmeier
Romano L. Mazzoli
William J. Hughes
Dan Glickman
Hamilton Fish, Jr.
Henry J. Hyde
Thomas N. Kindness
Michael DeWine

Impeachment Trial Staff

Nicholas D. Chabraja, Special Counsel
David W. DeBruin, Associate Special Counsel

House Judiciary Committee Staff
Participating in Impeachment Trial Preparation

M. Elaine Mielke, General Counsel
Alan F. Coffey, Jr., Associate Counsel
Judith Bailey, Counsel
Daniel M. Freeman, Counsel
Gary G. Goldberger, Counsel
Warren S. Grimes, Counsel
Joseph V. Wolfe, Counsel
Jonathan R. Yarowsky, Counsel

III.G

IN THE SENATE OF THE UNITED STATES

Sitting As A Court Of Impeachment

In re)
)
)
)
IMPEACHMENT OF JUDGE)
HARRY E. CLAIBORNE)

APPLICATION OF THE HOUSE OF REPRESENTATIVES FOR ISSUANCE OF SUBPOENAS

The House of Representatives respectfully requests that a subpoena be issued to each of the following witnesses, requiring their appearance at any trial of this case that may commence on September 15, 1986:

1. Mr. Joseph C. Wright
   1924 East Oakey Boulevard
   Las Vegas, Nevada 89104

2. Mrs. Constance Wright
   1924 East Oakey Boulevard
   Las Vegas, Nevada 89104

*3. Mr. James J. Brown
   830 East Charleston Boulevard
   Las Vegas, Nevada

*4. Ms. Annette Quintana
   (home address)
   901 Eugene Surnon Street
   Las Vegas, Nevada
   (business address)
   Goodman, Terry, Stein and Quintana
   520 South Fourth Street
   Las Vegas, Nevada 89101

*5. Mr. Frank Rothman
515 South Figueroa
Suite 1800
Los Angeles, California 90071

*6. Mr. George DeRoy
Hochman, Salkin and DeRoy
9100 Wilshire Boulevard
7th Floor, West Tower
Beverly Hills, California 90212

*7. Mr. Peter Echeverria
491 Court Street
Reno, Nevada

In addition, the House of Representatives respectfully requests that a subpoena decus tecum be issued to the following custodians of records, directing them to appear at any trial of this case that may commence on September 15, 1986, and to bring the following identified records:

*1. Custodian of Records
(Ms. Patricia Hartey)
Internal Revenue Service
Ogden, Utah Service Center

and bring: all tax records of Harry E. Claiborne for the tax years 1977 through 1980, including all origianl or amended income tax returns, and all applications for an automatic extension of time to file a tax return.

*2. Custodian of Records
(Ms. Anita Praytor)
Valley Bank of Nevada
Las Vegas, Nevada

and bring: all records of the bank that correspond to House Exhibits 10-14 (attached). These documents further may be identified as materials that Ms. Anita Praytor identified at the criminal trials involving Judge Harry E. Claiborne.

*3. Custodian of Records
(Ms. Elaine Hildebrandt)
United States Treasury
Washington, D.C.

and bring: all records of the Treasury Department that correspond to House Exhibit 33 (attached).

*4. Custodian of Records
(Ms. Annette Hensley)
Judicial Ethics Committee
Washington, D.C.

and bring: all records of the Judicial Ethics Committee that correspond to House Exhibit 16 (attached).

*5. Mr. Oscar B. Goodman
Goodman, Terry, Stein and Quintana
520 South Fourth Street
Las Vegas, Nevada 89101

and bring: all F.B.I. or I.R.S. witness statements, grand jury testimony, or depositions of either Joseph C. Wright or Constance Wright that were disclosed to the defense during either Judge Claiborne's first or second criminal trial.

---

*These witnesses will not be presented if the Senate grants a motion, filed by the House of Representatives, to admit certain prior testimony and exhibits as substantive evidence (Motion #4). Accordingly, these witnesses should be informed that the necessity of their appearance has not yet been determined.

Respectfully submitted,
THE UNITED STATES
HOUSE OF REPRESENTATIVES

By ______________________

Managers of the House of Representatives

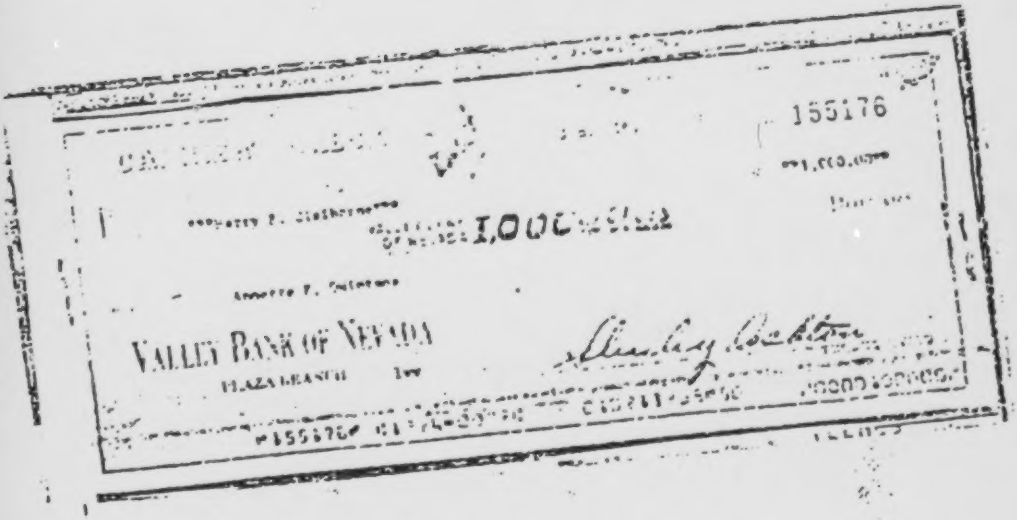
Peter W. Rodino, Jr.
Robert W. Kastenmeier
Romano L. Mazzoli
William J. Hughes
Dan Glickman
Hamilton Fish, Jr.
Henry J. Hyde
Thomas N. Kindness
Michael DeWine

Impeachment Trial Staff

Nicholas D. Chabraja, Special Counsel
David W. DeBruin, Associate Special Counsel

House Judiciary Committee Staff Participating in Impeachment Trial Preparation

M. Elaine Mielke, General Counsel
Alan F. Coffey, Jr., Associate Counsel
Judith Bailey, Counsel
Daniel M. Freeman, Counsel
Gary G. Goldberger, Counsel
Warren S. Grimes, Counsel
Joseph V. Wolfe, Counsel
Jonathan R. Yarowsky, Counsel



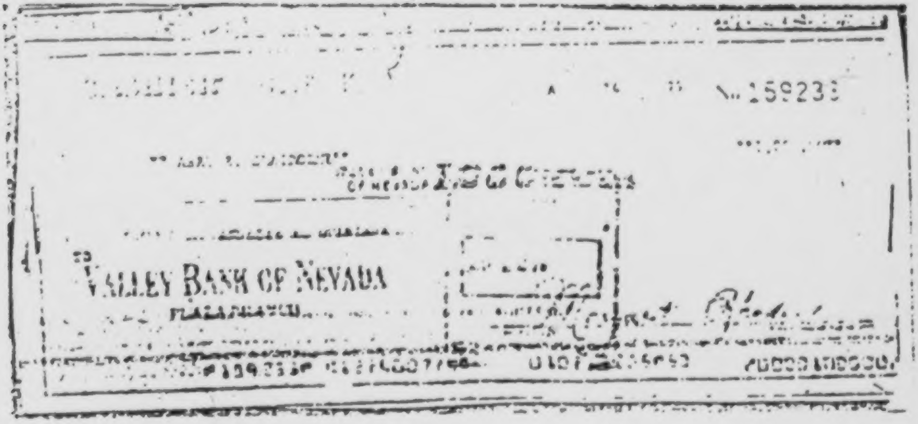
155176

1,000

VALLEY BANK OF NEVADA

PLAZA BRANCH

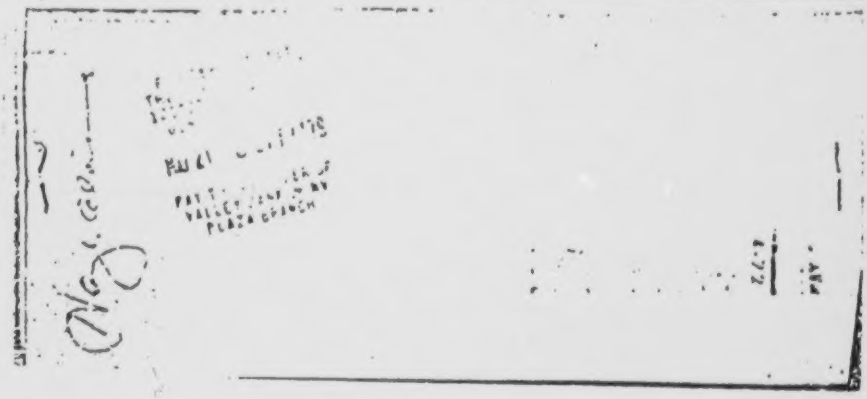
House Exhibit #10
To Be Attached To
Subpoena To Ms. A. Praytor



No. 159233

VALLEY BANK OF NEVADA

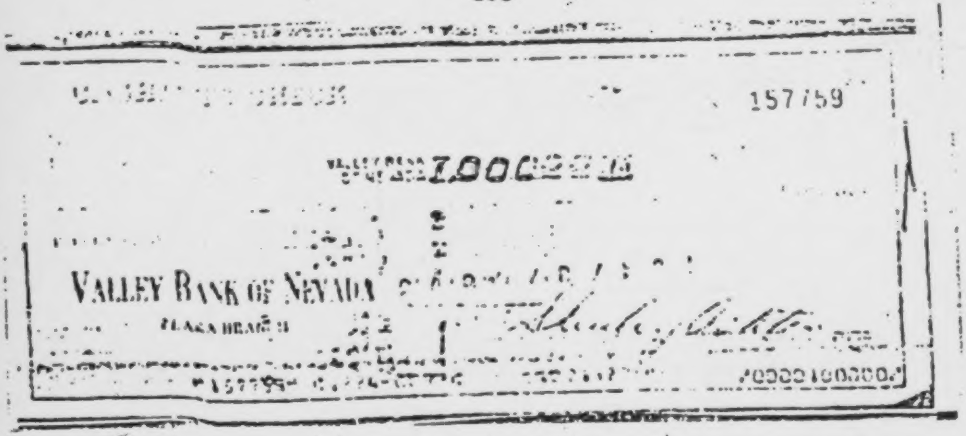
PLAZA BRANCH



VALLEY

PLAZA BRANCH

House Exhibit #11
To Be Attached To
Subpoena To Ms. A. Praytor



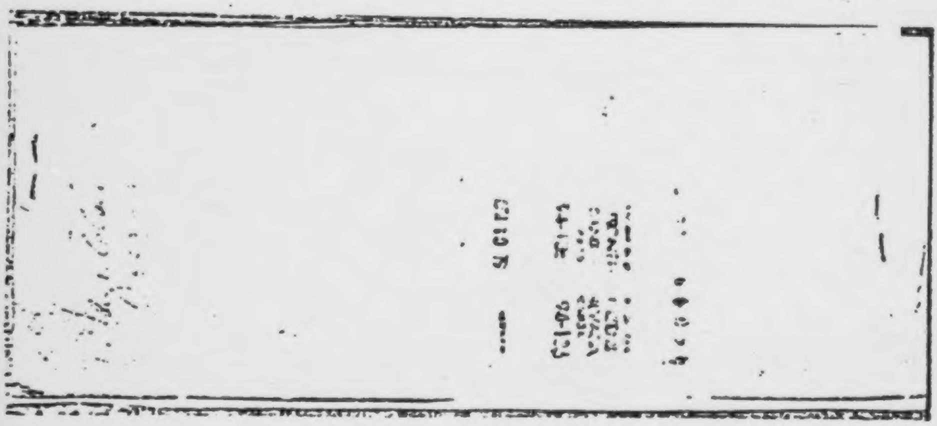
157759

1,000

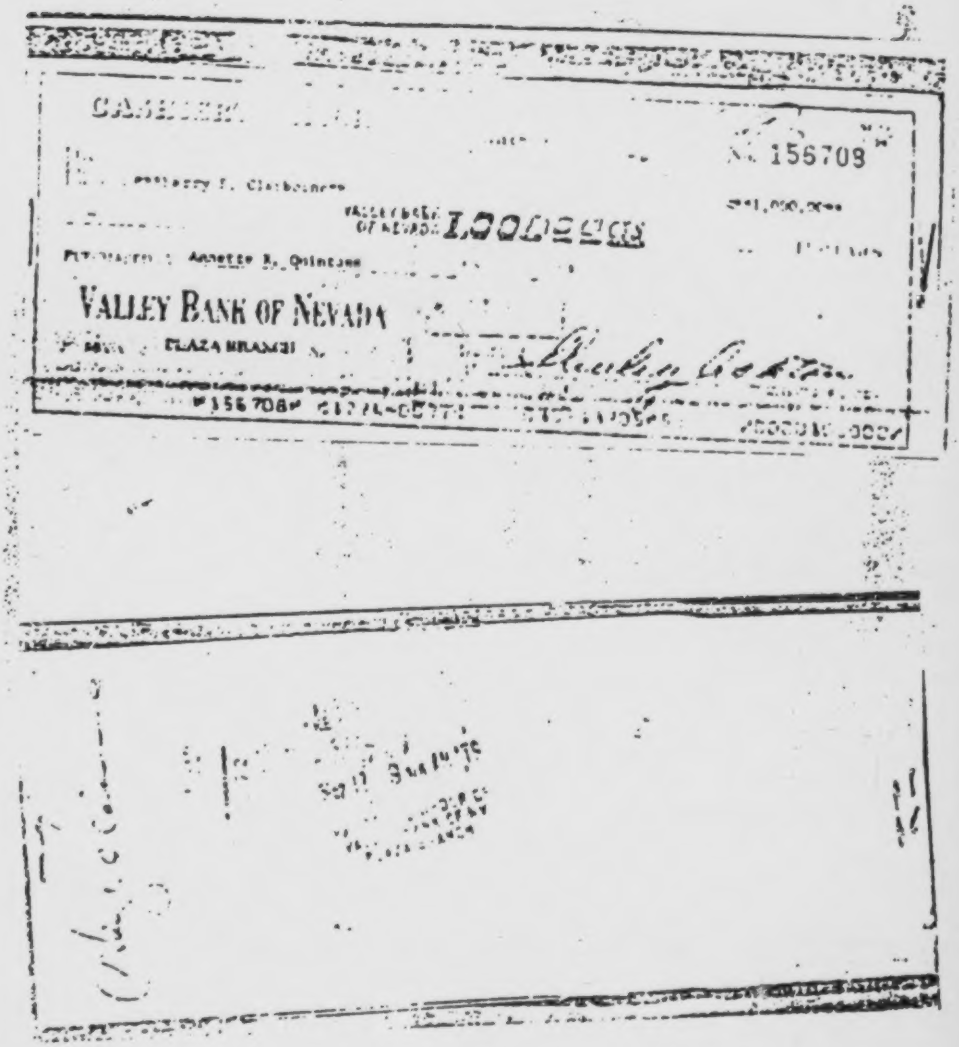
VALLEY BANK OF NEVADA

PLAZA BRANCH

/0000100000/



House Exhibit #12
To Be Attached To
Subpoena To Ms. A. Praytor



CASHIER'S CHECK

No. 156708

Harry E. Claiborne

$**1,000.00**

VALLEY BANK OF NEVADA 1,000 DOLLARS

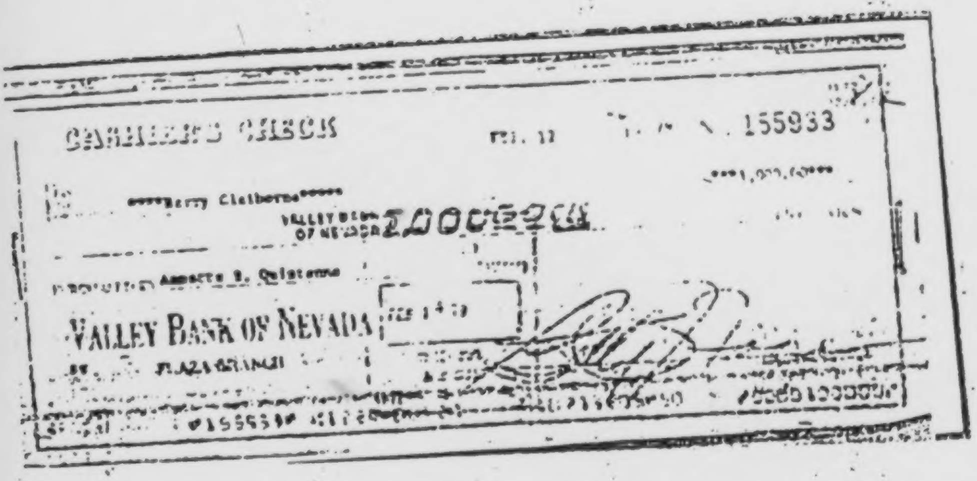
Purchaser: Annette B. Quintana

VALLEY BANK OF NEVADA

PLAZA BRANCH

⑈156708⑈

House Exhibit #13
To Be Attached To
Subpoena To Ms. A. Praytor .



CASHIER'S CHECK

155933

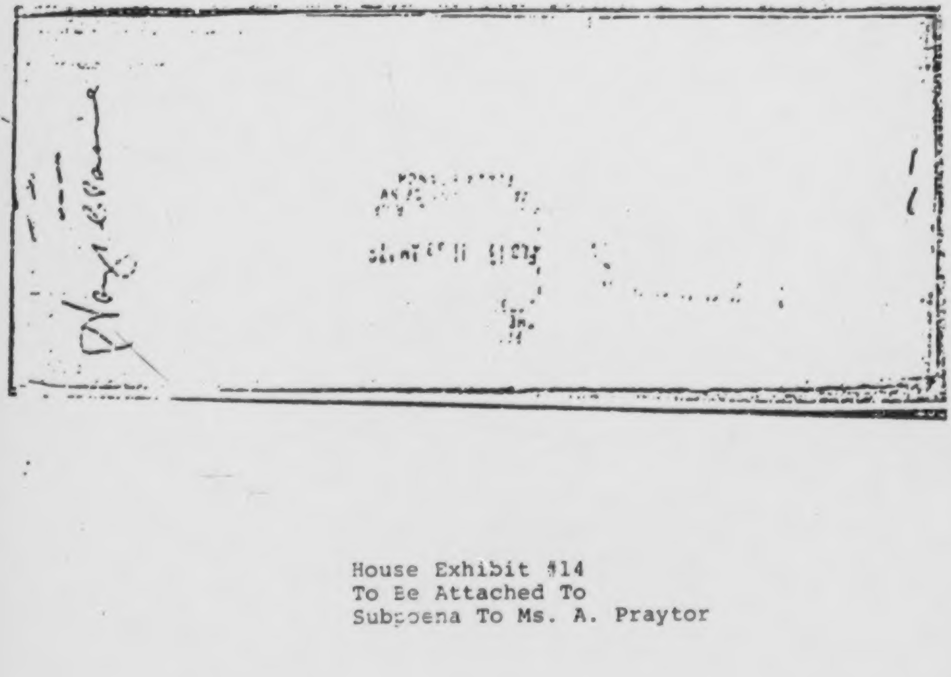
****Harry Claiborne*****

VALLEY BANK OF NEVADA

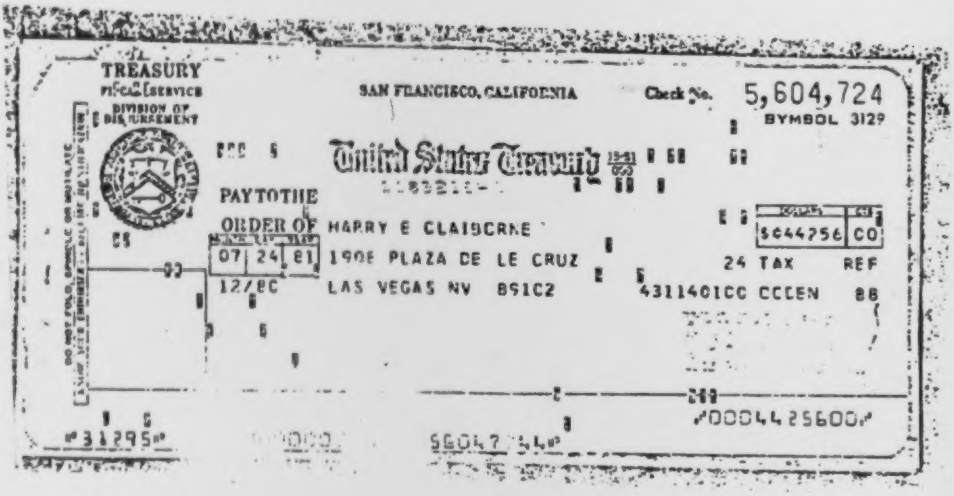
[illegible] B. Quintana

VALLEY BANK OF NEVADA

PLAZA BRANCH



House Exhibit #14
To Be Attached To
Subpoena To Ms. A. Praytor



TREASURY
FISCAL SERVICE
DIVISION OF DISBURSEMENT

SAN FRANCISCO, CALIFORNIA Check No. 5,604,724
SYMBOL 3129

United States Treasury $\frac{1531}{000}$

PAY TO THE ORDER OF HARRY E CLAIBCRNE

07	24	81

12/8C

1908 PLAZA DE LE CRUZ
LAS VEGAS NV 891C2

$044256	CO

24 TAX REF
4311401CC CCCEN 88

⑈31295⑈ 0000 5604724⑈ ⑈0004425600⑈

House Exhibit #33
To Be Attached To
Subpoena To Ms. E. Hildebrandt

AO 10

ANNUAL REPORT DUE BY MAY 15 FROM JUDICIAL OFFICERS AND CERTAIN JUDICIAL EMPLOYEES PER 28 USC App. I [illegible]

PERSON REPORTING, LAST NAME, FIRST, MIDDLE INITIAL Claiborne, Harry E.	COURT OR ORGANIZATION United States District Court	REPORTING DATE 5/15/80
TITLE United States District Judge	PERSON REPORTING ☒ FULL TIME OFFICERS & EMPLOYEES SUBMIT ON WHITE FORM. ☐ PART TIME OFFICERS SUBMIT ON [illegible] FORM.	[illegible]
OFFICE ADDRESS 300 Las Vegas Blvd. South, Las Vegas, Nevada 89101		
[illegible]	The following symbols may be used where applicable: (J) jointly owned by person reporting and spouse; (S) spouse; and (DC) dependent child.	DO NOT WRITE IN THIS SPACE

Note. Please read instructions carefully. Sign this form on the reverse side. Attach additional sheets if needed; identify each sheet by showing your name and the section being continued. Complete all parts. (IF NONE, SO INDICATE.) Please type or print clearly.

I. A. NON-INVESTMENT INCOME

The source, type and amount of earned income [illegible] from any source, other than salary from the United States Government, which you received including [illegible] honoraria, etc. EXCLUDE: (a) any income of child, (b) amounts aggregating under $100 [illegible]

SOURCE [illegible]	TYPE	AMOUNT
Clients' fees while in private practice		23,050.76
Sale of airplane		11,000.00

I. B. INVESTMENT INCOME

[illegible] dividends, interest, rent, royalties, annuities and capital gains [illegible] EXCLUDE: [illegible] Category 1 — not more than $1,000; 2 — $1,001-$2,500; 3 — $2,501-$5,000; 4 — $5,001-$15,000; 5 — $15,001-$50,000; 6 — $50,001-$100,000; 7 — over $100,000.

II. HOLDINGS

The identity and category of value of any interest in property held during the preceding calendar year in a trade or business, or for investment or the production of income (i.e., business interests, stocks and bonds, real estate, savings accounts and any other investment or income producing property including trust holdings), which has a fair market value exceeding $1,000 as of the end of the year. If holding was sold, indicate on form that it was sold and not held at end of year. EXCLUDE: (a) items under $5,000 which are personal savings deposits in banks and similar institutions, (b) debts owed to you by relatives, (c) a spouse's or child's holdings about which you have no knowledge, responsibility, nor past, present or future financial interest or economic benefit. Note: For this part, indicate Category of Value as follows: Category A — not more than $5,000; B — $5,001-$15,000; C — $15,001-$50,000; D — $50,001-$100,000; E — $100,001-$250,000; F — over $250,000.

(VALUE OF INCOME) TYPE	(VALUE OF INCOME) CATEGORY OF VALUE	SOURCE OF INCOME OR IDENTITY OF HOLDING	(VALUE OF HOLDING) VALUATION OPTION	(VALUE OF HOLDING) CATEGORY OF VALUE
Interest	2	Savings Acct., Nevada Savings and Loan, Las Vegas Nevada	D	C
Interest	2	TCD, Pioneer Citizens Bank, Las Vegas, Nevada	D	D

MAY 17 1980

[illegible]

Chairman, Judicial Ethics Committee

House Exhibit #16
To Be Attached To
Subpoena To Ms. A. Hensley

III. GIFTS AND REIMBURSEMENTS

EXCLUDE: Any items valued under $35; gifts from relatives; inheritances; mementos; honors; gifts to spouse or child independent of relationship to you.

The source and a brief description of gifts of transportation, lodging, food, or entertainment aggregating $250 or more in value received from any source during the preceding calendar year. *EXCLUDE:* Personal hospitality, gifts from U.S. government, gifts from foreign government in that country.

SOURCE	BRIEF DESCRIPTION
None	

B. The source, a brief description, and value of all other gifts aggregating $100 or more in value received from any source during the preceding calendar year.

SOURCE	BRIEF DESCRIPTION	VALUE

C. The source and a brief description of reimbursements aggregating $250 or more in value received from any source except U.S. government during the preceding calendar year.

SOURCE	BRIEF DESCRIPTION

NOTE: For Parts IV and V below, indicate Category of Value, as follows: Category A — not more than $5,000; B — $5,001-$15,000; C — $15,001-$50,000; D — $50,001-$100,000; E — $100,001-$250,000; F — over $250,000.

IV. LIABILITIES

The identity and category of value of the total liabilities owed to any creditor which exceed $10,000 at any time during the preceding calendar year, or charges on a revolving charge account if they exceed $10,000 at year end. *EXCLUDE:* (a) debts secured by mortgage on residence of person reporting or of spouse; (b) any loan secured by personal motor vehicles, household furniture or appliances which does not exceed purchase price of item; (c) a spouse's or child's liabilities about which you have no knowledge, responsibility, nor past, present or future financial interest or economic benefit; (d) loans from relatives.

IDENTITY	CATEGORY OF VALUE
None	

V. TRANSACTIONS

A brief description, the date, and category of value of any purchase, sale or exchange during the preceding calendar year which exceeds $1,000 in real property or in stocks, bonds, commodities futures, or other forms of securities. *EXCLUDE:* (a) transactions by and between reporting person and spouse or dependent child; (b) transactions affecting their personal residence; (c) a spouse's or dependent child's transactions about which you have no knowledge, responsibility, nor past, present or future financial interest or economic benefit.

BRIEF DESCRIPTION	DATE	CATEGORY OF VALUE
None		

VI. POSITIONS

The identity of all positions held on or before the date of filing during the current calendar year as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution. *EXCLUDE:* positions in any religious, social, fraternal or political entity, and positions solely of an honorary nature.

POSITION	NAME OF ORGANIZATION
None	

VII. AGREEMENTS

A description of the date, parties to, and terms of any agreement or arrangement currently in effect with respect to: future employment; leave of absence during period of U.S. government service; continuation of payments by a former employer other than the U.S. Government; and continuing participation in an employee welfare or benefit plan maintained by a former employer.

DATES	PARTIES	TERMS

FOR PART-TIME OFFICERS: HAVE THERE BEEN ANY OCCASIONS IN WHICH THE PERFORMANCE OF YOUR DUTIES PRODUCED A CONFLICT OF INTEREST? ☐ YES ☐ NO

NOTE: Any individual who knowingly and willfully falsifies, or who knowingly and willfully fails to file this report may be subject to civil & criminal sanctions (28 U.S.C. App. I, §304 & 18 U.S.C. §1001)

SIGNATURE [illegible]

DATE 5-14-80

United States Senate
WASHINGTON, DC 20510

8 September 1986

IV. MEMORANDUM FOR THE RECORD

On Monday, September 8, 1986, at 9:20 AM, Oscar B. Goodman, on behalf of himself and the Honorable Howard W. Cannon, Counsels for the Impeached Person, Judge Harry E. Claiborne, delivered to the Committee on Impeachment of the United States Senate pre-trial documents consisting of the following items:

- "Notice of Filing";
- "Supplement to List of Witnesses and Request for Subpoenas".

Copies of this filing are being distributed to the Senate Impeachment Committee Members and to their respective Staff Representatives on Monday, September 8, 1986.

Signed:
Anthony L. Harvey

Anthony L. Harvey
Clerk
Committee on Impeachment

IV.A

IN THE SENATE OF THE UNITED STATES

SITTING AS A COURT OF IMPEACHMENT

)
)
)
)
Impeachment of Judge)
Harry E. Claiborne)

NOTICE OF FILING

To: Mr. Anthony Harvey
Clerk of the Committee on Rules & Administration
United States Senate (SR-318)

PLEASE TAKE NOTICE that on this 5th day of September, 1986, the Honorable Harry E. Claiborne, Respondent, has posted to the Clerk of the Committee on Rules and Administration of the United States Senate, an original and thirty (30) copies of Supplement to List of Witnesses and Request for Subpoenas.

Simultaneous with the posting of the above described documents, the same were served upon The United States House of Representatives through its Special Counsel, Nicholas D. Chabraja, by Federal Express delivery.

Respectfully Submitted:

HARRY E. CLAIBORNE

By ______________________
Oscar B. Goodman, Esq. and
Honorable Howard W. Cannon

Attorneys for Respondent

IV.B

IN THE SENATE OF THE UNITED STATES

SITTING AS A COURT OF IMPEACHMENT

Impeachment of Judge
Harry E. Claiborne

SUPPLEMENT TO LIST OF WITNESSES AND REQUEST FOR SUBPOENAS

Persons for whom subpoenas have been requested but whose testimony was not delineated on the Summary are as follows:

1. **Lawrence Semenza** - Mr. Semenza, a former United States Attorney for the District of Nevada, who represented Jerry Watson regarding Grand Jury matters, will testify that Watson was threatened and harassed by Justice Department officials prior to a contemplated Grand Jury appearance.

2. **Honorable John L. Smith** - Judge Smith is a United States District Court Judge in the District of Columbia who reduced Joseph Conforte's sentence in a manner contrary to Rule 35 of the Federal Rules of Criminal Procedure at the instance of Department of Justice representatives.

3. **H. M. Greenspun** - Mr. Greenspun, the publisher of the **Las Vegas Sun**, will testify that Judge Claiborne's position in the Las Vegas community has not damaged the reputation and the integrity of the judiciary.

4. **Honorable E. M. Gunderson** - Justice Gunderson of the Nevada Supreme Court, will testify as a character witness.

5. **Peter Echeverria** - Mr. Echeverria, a former Chairman of the Nevada Gaming Commission, will testify as a character witness.

6. **B. Mahlon Brown, III** - Mr. Brown, a former United States Attorney for the District of Nevada, will be interrogated regarding conversations with Joseph Yablonsky, former Special Agent in Charge of the Las Vegas FBI, where he indicated that Judge Claiborne had to be targeted.

7. **Mills Lane, III** - Mr. Lane, District Attorney of Washoe County, Nevada, (Reno) will testify as to mis-representations made to him by Justice Department officials regarding Joseph Conforte, in order to have Mr. Lane cooperate regarding Conforte's criminal problems in Reno.

Those persons whose testimony had been summarized but were not on the subpoena request and, therefore, subpoenas are requested for them, are as follows:

1. **Kenneth C. Cory,** 1609 E. Sahara Avenue, Las Vegas, Nevada 89104.

2. **Stephen Stein,** 520 South Fourth Street, Las Vegas, Nevada 89101.

3. **Barry L. Lieberman,** 330 South Third St., Suite 1130, Las Vegas, Nevada 89101.

Respectfully Submitted:

HARRY E. CLAIBORNE

By
Oscar B. Goodman, Esq. and
Honorable Howard W. Cannon

Attorneys for Respondent

United States Senate
WASHINGTON, DC 20510

9 September 1986

V. MEMORANDUM FOR THE RECORD

On Tuesday, September 9, 1986, at 8:55 PM, the Managers on the part of the House of Representatives on the articles of impeachment against Judge Harry E. Claiborne delivered to the Committee on Impeachment of the United States Senate pre-trial documents consisting of the following items;

- A Notice of Filing specifying the materials being presented;
- Opposition to Motion for "Full" Impeachment Trial;
- Opposition to Motion to Designate "Beyond A Reasonable Doubt" as the Standard of Proof;
- Opposition to Motion to Dismiss Articles of Impeachment For Failure to State Impeachable Offenses;
- Opposition to Motion for Bill of Particulars;
- Opposition to motion for Discovery; and
- Opposition to Motion to Declare Senate Impeachment Rule XI Unconstitutional.

The Senate having recessed at 7:19 PM, copies of this filing are being distributed to the Senate Impeachment Committee Members, and to their respective Staff Representatives, on the morning of Wednesday, September 10, 1986, prior to the Senate Impeachment Committee meeting at 10:00 AM in the Russell Senate Office Building, Room SR-301.

Signed:
Anthony L Harvey
Anthony L. Harvey
Clerk
Committee on Impeachment

V.A

IN THE SENATE OF THE UNITED STATES

SITTING AS A COURT OF IMPEACHMENT

Impeachment of Judge
Harry E. Claiborne

NOTICE OF FILING

TO: Mr. Anthony Harvey
Clerk of the Committee on Rules and Administration
United States Senate (SR-318)

PLEASE TAKE NOTICE that on this 9th day of September, 1986, the United States House of Representatives has filed with the Clerk of the Committee on Rules and Administration of the United States Senate, an original and thirty copies of the following:

(a) Opposition to Motion for "Full" Impeachment Trial;

(b) Opposition to Motion to Designate "Beyond A Reasonable Doubt" as the Standard of Proof;

(c) Opposition to Motion to Dismiss Articles of Impeachment For Failure To State Impeachable Offenses;

(d) Opposition to Motion for Bill of Particulars;

(e) Opposition to Motion For Discovery; and

(f) Opposition to Motion to Declare Senate Impeachment Rule XI Unconstitutional.

Simultaneous with the filing of the above described documents, the same were served on opposing counsel, Oscar B. Goodman, Esquire, and on The Honorable Howard W. Cannon by messenger.

THE UNITED STATES
HOUSE OF REPRESENTATIVES

By Nicholas D. Chabraja
Nicholas D. Chabraja
Special Counsel

Managers of the House of Representatives

Peter W. Rodino, Jr.	Hamilton Fish, Jr.
Robert W. Kastenmeier	Henry J. Hyde
Romano L. Mazzoli	Thomas N. Kindness
William J. Hughes	Michael DeWine
Dan Glickman	

Impeachment Trial Staff

Nicholas D. Chabraja, Special Counsel
David W. DeBruin, Associate Special Counsel

House Judiciary Committee Staff Participating in Impeachment Trial Preparation

M. Elaine Mielke, General Counsel
Alan F. Coffey, Jr., Associate Counsel
Judith Bailey, Counsel
Daniel M. Freeman, Counsel
Gary G. Goldberger, Counsel
Warren S. Grimes, Counsel
Joseph V. Wolfe, Counsel
Jonathan R. Yarowsky, Counsel

V.B

IN THE SENATE OF THE UNITED STATES

Sitting As A Court Of Impeachment

In re)
)
)
)
)
IMPEACHMENT OF JUDGE)
HARRY E. CLAIBORNE)

OPPOSITION TO MOTION FOR "FULL" IMPEACHMENT TRIAL

The House of Representatives, through its managers and counsel, respectfully offers this opposition and reply to Judge Claiborne's motion for a "full" impeachment trial.[1]

In his motion, and in virtually all of his other major pleadings,[2] Judge Claiborne asks the Senate to grant him a full evidentiary hearing on a panoply of issues, ranging from the underlying merits of the tax fraud convictions to claims that Chief Justice Warren Burger and FBI Director William Webster were allied in a massive conspiracy to get Judge Claiborne off the bench. Judge Claiborne urges the Senate to ignore completely the proceedings in the federal courts, and indeed states that the House of Representatives "insults" the Senate by tendering the record of those proceedings for the consideration of the Senate.

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[1] Judge Claiborne's pleading is captioned: "Motion for Full and Fair Impeachment Trial Before the Entire Senate of the United States, or in the Alternative for Dismissal; and Reply to House of Representative Motions #1 and #2 on File Herein."

[2] *See*, in addition to the motion identified in Note 1, *supra*, "Pretrial Statement of the Honorable Harry E. Claiborne" and "Answer to Articles of Impeachment."

Judge Claiborne's demand for a "full" trial de novo on all evidentiary issues derives essentially from two claims: (1) that the prior proceedings were fundamentally unfair, and thus not worthy of reliance; and (2) that, in any event, the Senate has the responsibility, based on the constitutional directive that "[t]he Senate shall have the sole power to try all impeachments,"[3] to conduct an evidentiary hearing de novo on every claim raised by either party.

In this opposition, the House of Representatives will examine each of these contentions.

I. Were the Prior Proceedings Fundamentally Unfair?

The House of Representatives seeks to make its position clear from the outset: if the prior proceedings involving Judge Claiborne were flawed in any material respect, the Senate should ignore them and consider the allegations of the House of Representatives de novo. If Judge Claiborne can prove that a fraud was perpetrated upon the court, if he can demonstrate that the factual findings of the jury lack integrity, then the Senate certainly should re-examine the facts of the tax fraud charges.

At the same time, the Senate should not be forced to expend its time on empty rhetoric or claims that do not concern the integrity of the fact-finding process. The considered actions of a co-equal branch of government are entitled to a presumption of regularity.[4] The Senate legitimately may provide a forum for the presentation of evidence of irregularity; the Senate need not provide an opportunity for Judge Claiborne to search for it.

---

[3] Article I, Section 3.

Against this background, the House of Representatives invites the Senate to consider what Judge Claiborne does, and does not, raise in his extensive attack on the prior proceedings.

A. Claims Raised by Judge Claiborne

In his pleadings, Judge Claiborne alludes to numerous reasons why the Senate should not rely upon the prior proceedings. Few of the claims are carefully identified or alleged with specificity, perhaps in an intentional attempt to raise the specter that there is more at issue than in fact exists. The House of Representatives submits that, when Judge Claiborne's claims are identified and considered, few if any have any impact upon the integrity of the fact-finding process. The following issues are raised in Judge Claiborne's Answer, Pretrial Statement, and motion for a "full" trial:

1. Whether Judge Claiborne was "targeted" by the Executive Branch.

---

[4] The decisions of the District Court were reviewed by a three-judge panel of the Court of Appeals. The full Ninth Circuit Court of Appeals, with 19 judges participating, saw no reason to review the case further. The Supreme Court denied a petition for certiorari. The United States Senate certainly is not the first body called upon to examine the regularity of the prior proceedings.

Perhaps the most pervasive theme in all of Judge Claiborne's pleadings is that he was "targeted" by the Executive Branch because he was an ardent defender of civil liberties and an outspoken critic of the FBI organized crime "task force" in Las Vegas. An entire section of his Pretrial Statement is captioned "The Motive," in which Judge Claiborne claims that FBI agent Joseph Yablonsky waged a personal campaign to "get" Judge Claiborne. As perhaps best summarized in the motion for a "full" trial, at 2:

> That but for the Respondent Harry E. Claiborne's reputation as an ardent defender of civil liberties, both before and after his ascension to the bench, which caused discomfiture to members of the Executive Branch of government (most notably the Special Organized Crime Task Force and Las Vegas FBI Special Agent in Charge Joseph Yablonsky) his prosecution would never have occurred.

In essence, Judge Claiborne advances a claim of "selective prosecution."

The House of Representatives submits that the motives of the parties who investigated and prosecuted Judge Claiborne are irrelevant to this impeachment proceeding. If Judge Claiborne in fact committed tax fraud -- an issue that this claim of error does not address -- the animus of the parties who uncovered and presented the evidence does not undermine the fact that Judge Claiborne has violated the public trust. In essence, this claim is one that "I should not have been caught." Certainly, such a contention has no place in an impeachment inquiry.

The same conclusion follows with respect to Judge

Claiborne's claim of "selective prosecution." The fact that another citizen may or may not have been prosecuted does not make Judge Claiborne any less guilty. Prosecutors legitimately have broad discretion in determining when to institute a federal prosecution; courts will not overrule an exercise of that discretion unless it discriminates against a suspect class. Oyler v. Boles, 368 U.S. 448 (1962). Moreover, the prosecution does not render the verdict in a criminal case; in a contested proceeding, only a jury may convict. It is the integrity of the fact-finding process, not the motivations of the litigants, that should be the focus of the Senate inquiry.

2. Whether exculpatory evidence was withheld from the jury.

There is no more fundamental claim with respect to the integrity of the prior proceedings than that material and exculpatory evidence allegedly was withheld from the trier of fact. Judge Claiborne alleges that two such items were withheld from the jury:[5] a) the record of an interview of Charlotte Travaglia, who helped to prepare the 1980 tax return, by Richard Jessinger on or about June 17, 1983;[6] and b) a memorandum of an interview of Joseph Wright, who prepared the 1979 tax return, that was conducted on or about February 16, 1983.[7] A careful examination of Judge Claiborne's contentions with respect to these materials, however, reveals that their disclosure would not have impacted the trial process.

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[5] See Judge Claiborne's "Answer to Articles of Impeachment," at 4 (identifying "[t]wo items of such exculpatory evidence, the existence of which is now known to Judge Claiborne").

[6] Judge Claiborne does not append a copy of this report, for all parties to examine. The House of Representatives does not have a copy of the report, and will accept, for this opposition, Judge Claiborne's description of it.

a. The Travaglia interview of June 17, 1983.

Judge Claiborne claims that the Travaglia interview corroborates Judge Claiborne's contention at trial that he made full disclosure of his 1980 income to Jerry D. Watson, his accountant for that year, and also demonstrates that Mr. Watson's office was confused about the proper treatment of that income. The House of Representatives submits that this evidence could not have had an effect upon the trial.

First, both Mr. Watson and Judge Claiborne testified themselves at the trial, and were questioned extensively about Judge Claiborne's disclosure of income to Mr. Watson and Mr. Watson's treatment of that income on the 1980 return. *The government did not rebut this testimony.* No evidence was submitted that Judge Claiborne had *not* disclosed his income to Mr. Watson. The government's theory at the second trial, which the House of Representatives tracks in its Pretrial Statement, was that the 1980 return was so inartfully drafted, so inaccurate as to material facts, and so divergent from anticipated tax liability that a man with Judge Claiborne's experience could not hide in good faith behind it.[8] Ms. Travaglia's statement is irrelevant to that theory of guilt, which is the theory that was accepted by the jury.

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[7] The memorandum of this interview is attached to this opposition as Exhibit A.

Second, Judge Claiborne makes no showing why this allegedly exculpatory evidence could not have been presented at trial. The interview at issue occurred in June of 1983; the trial was not conducted until August of 1984. Ms. Travaglia worked with Mr. Watson; her identity certainly was known to Judge Claiborne. Judge Claiborne suggests that Ms. Travaglia was ill, but offers no reason why her testimony could not have been submitted by deposition. Judge Claiborne also boldly claims that Ms. Travaglia "was frightened or induced by wrongful governmental actions to withhold such exculpatory information from Judge Claiborne and his attorneys."[9] However, not a single governmental act is identified to support this claim. The Senate of the United States is not required to conduct a full evidentiary hearing on the basis of completely unsubstantiated and conclusory allegations.

b. The Wright interview of February 16, 1983.

Judge Claiborne suggests that the memorandum of this interview was important for several reasons. First, it disclosed that Mr. Wright destroyed certain documents. Second, it disclosed contacts between Constance Wright and Ginny McElwain,

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[8] See Closing Argument of William C. Hendricks III, United States Department of Justice, Transcript of Proceedings at 26-34 (August 9, 1984).

[9] Answer to Articles of Impeachment, at 5.

Judge Claiborne's secretary. Third, it identified Ken Swanson, a former employee of Mr. Wright.[10] Again, none of these materials could have had any reasonable impact upon the trial.

The suggestion that Mr. Wright destroyed documents has been tremendously overplayed. The entry in the interview statement reads as follows:

> Wright kept the photocopies of the customer receipts. Those copies and the journals prior to 1976 were thrown away when Wright moved his office from 1233 S. Commerce in August of 1981.

The statement has nothing to do with tax records; it refers to customer receipts and journals prepared from those receipts. The statement has nothing to do with material for the 1979 tax year; it refers to information compiled prior to 1976. There simply is nothing exculpatory in this statement. Moreover, Judge Claiborne acknowledges that, at the first trial, "Wright admitted that he had sometimes misplaced files or papers."[11] Thus, Judge Claiborne could impeach Mr. Wright on this issue with prior sworn testimony that was much more on point.

The other claims with respect to the February 16 memorandum are even less weighty. The significance of contacts between Constance Wright and Ginny McElwain, the secretaries, is difficult to discern. Joseph Wright testified at length about contacts between his office and Ginny McElwain.[12] Similarly, with respect to Ken Swanson, Mr. Wright testified at the first trial that other accountants in his office had worked on Judge Claiborne's tax returns.[13] If the defense had not known already, Judge Claiborne had ample notice of this fact and sufficient time to pursue any relevant investigation.

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[10] The contention with respect to Mr. Swanson is made in Judge Claiborne's Pretrial Statement, at 12.

[11] *See* Judge Claiborne's Pretrial Statement, at 10.

In sum, Judge Claiborne seeks to make very much out of very little. No material exculpatory evidence was withheld from the trier of fact.

3. Whether Joseph Wright was impermissibly "coached" by the government.

Judge Claiborne repeatedly contends that "[t]he government's prosecutors spent over 100 hours coaching their crucial witness on the tax charges, Claiborne's former accountant Joseph Wright."[14] The argument is based entirely on a statement of Mr. Wright at the second trial that "I have some 100 hours into this case."[15] Mr. Wright did not state that he had spent 100 hours talking to prosecutors or government agents. Indeed, it is noteworthy that Mr. Wright was called to be a witness, in two separate trials, both of which were located in Reno,

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[12] See, e.g., Transcript of Proceedings at 124-125 (August 2, 1984).

[13] See Transcript of Proceedings (first trial) at 333 (March 16, 1984).

[14] Judge Claiborne's Pretrial Statement, at 10.

[15] Transcript of Proceedings, at 273 (August 3, 1984).

Nevada.[16] He was required to participate in grand jury proceedings, which he did by means of a deposition. Considering these facts, it is hardly surprising that Joseph Wright has "100 hours into this case." Once again, Judge Claiborne has exaggerated and misstated the facts, to create an issue that simply does not exist.

4. Whether Joseph Wright changed his testimony.

Judge Claiborne contends that Joseph Wright changed his testimony between the first and second trials. It is not disputed, however, that counsel for Judge Claiborne was free to impeach Mr. Wright with any prior inconsistent statements. Counsel in fact attempted to do so,[17] just as Judge Claiborne was impeached with what the government believed were changes in his testimony.[18] This is precisely the type of claim that is best resolved by an impartial jury. There is no reason for the Senate to revisit this contention.

5. Whether government agents "burglarized" Judge Claiborne's home or conducted other "covert" surveillance.

Judge Claiborne contends that his "most shocking allegation"[19] is that government agents did a "black bag" job on his home in search of evidence. Similarly, he claims to have been the victim of a "mail cover." Although Judge Claiborne does not identify any evidence introduced by the government at trial that was secured through an unlawful search and seizure, he contends that these actions "shock the conscience" and compel dismissal of the proceedings.

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[16] Mr. Wright lives in Las Vegas.

[17] See, e.g., Transcript of Proceedings at 251, 293-295 (August 3, 1984).

[18] See, e.g., Transcript of Proceedings at 924, 929, 941, 961, 972, 977 (August 7, 1984).

[19] Judge Claiborne's Pretrial Statement at 23.

The Department of Justice has filed an extensive pleading rebutting Judge Claiborne's factual allegations.[20] There is no reason, however, for the Senate to consider these claims. These allegations of Judge Claiborne are completely removed from the jury's assessment of guilt or innocence. They concern, at best, police misconduct in the manner in which evidence was secured; they involve claims that, if proved, could warrant an application of the "exclusionary rule" in a judicial proceeding.

The House of Representatives submits that the exclusionary rule has no place in an impeachment proceeding. The rule was created by the judiciary and is designed primarily to deter police misconduct. It is not "a personal constitutional right of the party aggrieved." United States v. Calandra, 414 U.S. 338, 348 (1974). Even in judicial proceedings, its application has been limited.[21] The prospect of a dismissal of a criminal case is sufficient to deter police misconduct; little would be added by applying this admittedly harsh sanction to impeachment proceedings. It is almost inconceivable that a public official, guilty of criminal misconduct while in office, could avoid impeachment solely because misconduct had occurred in the way that evidence initially was obtained. There is no reason for the Senate to spend any time on those allegations.

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[20] See "Government's Opposition to Defendant's Motion to Vacate Judgment and Sentence" (filed May 15, 1986).

[21] The exclusionary rule does not apply in certain instances in which the police acted in good faith, United States v. Leon, 468 U.S. 897 (1984), the evidence was obtained from a source independent of the misconduct, United States v. Crews, 445 U.S. 463 (1980), or the evidence "inevitably" would have been obtained in a lawful manner. Nix v. Williams, 467 U.S. 431 (1984).

6. Whether the government improperly procured and presented perjured testimony by Joseph Conforte.

Seven pages of Judge Claiborne's Pretrial Statement (pages 15-21) allege government misconduct in the use of Joseph Conforte as a witness against Judge Claiborne. However, Joseph Conforte was not a witness at the second trial.

Judge Claiborne argues, as if it were evidence in his favor, that the jury in the first trial did not reach a verdict on any count and that the government then moved to dismiss the Conforte allegations.[22] It is equally noteworthy that the jury in the first trial failed to acquit Judge Claiborne on any charges, despite the presumption of innocence in his favor. The House of Representatives submits that what is significant is that, at the second trial, which had nothing to do with the Conforte allegations, a jury unanimously found Judge Claiborne guilty, beyond a reasonable doubt, of two tax fraud charges.

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[22] See Motion for Full and Fair Impeachment Trial, at 3.

Perhaps recognizing the irrelevance of the Conforte allegations to the tax fraud convictions, Judge Claiborne contends that Mr. Conforte infected the grand jury that indicted Judge Claiborne on the tax charges. As alleged in his Pretrial Statement, at 20:

> The Conforte allegations so inflamed the grand jury into believing that Claiborne was a corrupt judge, that they voted to indict on the tax charges as well.

This contention is disingenuous. If a jury at trial, not influenced by the Conforte allegations, found Judge Claiborne guilty beyond a reasonable doubt, there is no reason to believe that a grand jury would not have found that sufficient evidence existed to warrant an indictment. Judge Claiborne's claim with respect to the Conforte allegations is again, in essence, "I should not have been caught on the tax charges." The Conforte claims may be ignored by the Senate.

7. Whether the conspiracy against Judge Claiborne extended to the selection of judges.

In perhaps his most creative but strained argument, Judge Claiborne contends that the conspiracy against him extended to the selection of the judges who presided over the proceedings:

> Here, we are confronted with a particularly sinister form of "court packing" in which a particular ideological and political clique in the Executive and Judicial Branches have joined forces to remove a judge, probably not intended to be the only one with whom they disagree.[23]

Judge Claiborne also contends that judges were "intimidated by that which they saw happening to Judge Claiborne,"[24] and failed even to read his briefs or consider his arguments on appeal.[25]

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[23] Motion for Full and Fair Impeachment Trial, at 19.

There are no specific allegations or proffers of evidence in support of any of these broad contentions. There is no hint of evidence of a conspiracy. There is no specification of proof that judges in fact were "cowed" by the Executive Branch. There is no explanation as to how Judge Claiborne knows what other judges did or did not read. There is no reference to evidence of personal bias on the part of any member of the judiciary against Judge Claiborne. Judge Claiborne may feel the need, to obtain a hearing in the Senate, to allege misconduct by the other branches of government, but there simply is no substantiation for any of his claims.

Moreover, it was not the judiciary that convicted Judge Claiborne. He was found guilty by a jury that he helped to choose, a jury made up of the "little people" in the community that Judge Claiborne has fought so hard to protect.

B. Claims Not Raised by Judge Claiborne.

It is important to emphasize what Judge Claiborne does not, and cannot, contend. He makes no claim that he was restricted in any manner in his cross-examination of Joseph Wright. He offers no evidence that Mr. Wright was biased against him, or that any deal was struck for his accountant's testimony. Judge Claiborne makes no argument that his own testimony was limited in any material respect.

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[24] Id., at 2.

[25] Answer to Articles of Impeachment, at 3.

These are the kind of claims that would undermine the integrity of Judge Claiborne's trial. But the evidence on these matters demonstates that the trial procedures in fact were fair. Joseph Wright was cross-examined fully by Judge Claiborne's attorneys. The lapses in his memory were emphasized repeatedly in examination.[26] No evidence of bias was elicited; Mr. Wright indeed testified reluctantly against a long-standing friend. His testimony was not secured by any motive for personal gain. Similarly, the irregularity and effect of the 1980 tax return was disclosed properly to the jury. With respect to each year, Judge Claiborne testified fully in his own defense.

In sum, the real issues on the tax fraud charges -- not the smoke that clutters most of Judge Claiborne's pleadings -- were placed squarely before the jury. Judge Claiborne's own counsel argued to the jury that, to convict him, "you would have to believe that Judge Claiborne and his secretary, Judy Ahlstrom, both perjured themselves completely under oath in this trial."[27] The issues were placed directly before the jury, and Judge Claiborne lost. The Senate may choose to try this case again, but it should not do so on the ground that the prior proceedings were unfair.

II. Does the Senate Have a Constitutional Obligation to Repeat the Proof on the Tax Charges?

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[26] See Transcript of Proceedings at 302, 336 (August 3, 1984).

[27] Closing Argument of J. Richard Johnston, Transcript of Proceedings at 60 (August 9, 1984).

The Constitution declares that the Senate has the sole power to try all impeachments. Article I, Section 3. In its earlier pleadings, the House of Representatives has set forth its argument that the Senate need not simply repeat pro forma the proof on the tax charges.

The meaning of the word "trial" cannot be established without identifying the issue to be resolved. If there is one thing that the historical materials cited by Judge Claiborne make clear, it is that the ultimate issue in any impeachment trial is whether there has been a violation of the public trust.

> A well constituted court for the trial of impeachments is an object not more to be desired than difficult to be obtained in a government wholly elective. The subjects of its jursidiction are those offenses which proceed from the misconduct of public men, or in other words from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated political, as they relate chiefly to injuries done immediately to the society itself.

The Federalist No. 65 (Alexander Hamilton), at 477 (Franklin Lib. Ed. 1984).

The House of Representatives submits that evidence of Judge Claiborne's violation of the public trust is his conviction, obtained in a fair and final proceeding, of two felony offenses. The fact that this evidence may be submitted quickly, and is essentially uncontroverted, does not make the proceeding less of a "trial."

The historical materials cited by Judge Claiborne do not require the Senate to conduct a full evidentiary hearing on all issues of fact. The principal issue in the historical debates was whether the Senate or the Supreme Court should preside over the proceeding.[28] At the time of the debates, when the government (and particularly the federal judiciary) was smaller, and legislative demands were fewer, it was assumed that an impeachment trial would precede a criminal trial.[29] The historical materials simply provide no answer to the question presented by the existence of Judge Claiborne's criminal conviction.

The House of Representatives submits that, as the body with the sole power to try all impeachments, the Senate has the power to establish the proper scope of this proceeding. The Senate has the constitutional authority to determine that the sole issue that need be considered at this trial is whether the proceedings that led to Judge Claiborne's conviction in the federal courts of the United States were regular and proper. Upon evidence that the proceedings were fair, and that Judge Claiborne thus has violated the public trust, the Senate should convict Judge Claiborne and remove him from office.

Respectfully submitted,

THE UNITED STATES
HOUSE OR REPRESENTATIVES

By
Nicholas D. Chabraja
Special Counsel

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[28] See the Federalist No. 65, supra, at 478-481.

[29] Id., at 480 ("The punishment, which may be the consequence of conviction upon impeachment, is not to terminate the chastisement of the offender. After having been sentenced to a perpetual ostracism from the esteem and confidence, and honors and emoluments of his country; he will still be liable to prosecution and punishment in the ordinary course of law.")

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V.C

IN THE SENATE OF THE UNITED STATES

Sitting As A Court Of Impeachment

In re)
)
)
)
)
IMPEACHMENT OF JUDGE)
HARRY E. CLAIBORNE)

OPPOSITION TO MOTION TO DESIGNATE "BEYOND A REASONABLE DOUBT" AS THE STANDARD OF PROOF

The House of Representatives, through its managers and counsel, respectfully submits this opposition to Judge Claiborne's motion to designate "beyond a reasonable doubt" as the standard of proof in this impeachment proceeding. The standard proposed by Judge Claiborne has no application to an impeachment trial, where the Senate is constitutionally barred from imposing criminal punishment. Since the fundamental purpose of an impeachment proceeding is to preserve the confidence of the people in public officials and institutions, conviction in the Senate is proper if the House of Representatives establishes by a preponderance of the evidence that Judge Claiborne has committed an impeachable offense.

I. Since An Impeachment Proceeding May Not Impose Criminal Punishment, A Criminal Standard Of Proof Is Not Required.

The Supreme Court has held that, in a criminal proceeding, the charges must be proved beyond a reasonable doubt. In re Winship, 397 U.S. 358, 362-64 (1970). This standard of proof has been developed "to safeguard men from dubious and unjust convictions, with resulting forfeitures of life, liberty and property." Brinegar v. United States, 338 U.S. 160, 174 (1949).

This standard is inapplicable in an impeachment trial, which cannot result in the imposition of criminal punishment. Article I, Section 3 of the Constitution expressly provides that the judgment of the Senate "shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, trust or profit under the United States." Criminal punishment can be imposed only in a separate judicial proceeding: "the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law." Id.

Judge Claiborne contends that the Constitution recognizes that impeachment trials are in the nature of criminal proceedings. To be sure, the Constitution borrowed from the English impeachment model certain criminal law terms, such as "high Crimes and Misdemeanors" and "conviction." The drafters of the Constitution expressly departed, however, from the English practice of allowing the Parliament to impose capital punishment and other criminal sanctions.

The Senate has never considered itself to be bound by the procedures applicable in a criminal trial. In the impeachment trial of Judge Halsted L. Ritter in 1936, the respondent's attorney moved to strike an article of impeachment on the ground that it was duplicative and contrary to principles governing pleading in criminal cases. The Senate voted to deny the motion. As the Presiding Officer of the Senate stated:

> [A]n impeachment proceeding before the Senate, sitting as a Court, is sui-generis, partaking neither of the harshness and rigidity of the criminal law nor of the civil proceedings requiring less particularity.

Impeachment Trial of Halsted L. Ritter, S. Doc. No. 200, 74th Cong., 2d Sess., 50 (1936).

II. The Standard Of Proof "Beyond A Reasonable Doubt" Is Inapplicable To A Proceeding In Which The Interests Of Society, As Opposed To The Interests Of the Individual, Predominate.

A criminal proceeding properly focuses on individual rights and protections. Because of the harshness of the criminal sanction, which may deprive an individual of his freedom or even his life, it is widely accepted -- indeed, almost trite to restate -- that it is better for numerous guilty persons to be acquitted than for one innocent person to be convicted. The standard of proof "beyond a reasonable doubt" implements this fundamental value.

In an impeachment proceeding, the Constitution reserves for the Senate the task of determining whether an impeached government official should retain his office. At issue in such a proceeding is not an individual's life, or his liberty, or even simply his job: at issue is the public trust and confidence in the officials who constitute our government. If the House of Representatives establishes that the evidence preponderates in favor of the proposition that a civil official has committed an impeachable offense and thus has violated that public trust, the official should be removed from office.

Protection against arbitrary or unprincipled removal from office is provided by other constitutional requirements. Impeachment requires the separate action of each House of Congress. As noted by Alexander Hamilton, the assignment of "the right of accusing" to one House and of "the right of judging" to the other "guards against the danger of persecution from the prevalency of a factious spirit in either of those branches." The Federalist, No. 66 at 484 (Franklin Lib. Ed.). In addition, "no Person shall be convicted [in the Senate] without the concurrence of two-thirds of the Members present." Article I, Section 3. Alexander Hamilton again emphasized the protection that this provision offered to the individual impeached:

> As the concurrence of two-thirds of the Senate will be requisite to a condemnation, the security to innocence, from this additional circumstance, will be as complete as itself can desire.

Id. In light of these safeguards, there is no reason for the Senate to adopt a burden of proof that would fail to provide sufficient protection to the public interest in the removal of corrupt government officials.

III. A Preponderance Of The Evidence Standard Is Consistent With Analogous Judicial Precedent.

Although proof beyond a reasonable doubt is required before criminal punishment can be imposed, the Supreme Court has refused to apply this standard "too broadly or casually in noncriminal cases." Addington v. Texas, 441 U.S. 418, 428 (1979). The mere fact that some harm may be inflicted upon the respondent does not trigger application of a criminal standard of proof. As Justice Frankfurter noted, "the fact that harm is inflicted by governmental authority does not make it punishment." United States v. Lovett, 328 U.S. 303, 324 (1946) (concurring opinion).

In most civil proceedings, a plaintiff must establish his case by a preponderance of the evidence. The Supreme Court has upheld this standard against constitutional attack in a proceeding to delicense a person from practicing a particular profession, Steadman v. SEC, 450 U.S. 91, 95 (1981), or to expatriate a United States citizen. Vance v. Terrazas, 444 U.S. 252 (1980). The Supreme Court also has held that proof beyond a reasonable doubt is not required in civil commitment proceedings, Addington v. Texas, 441 U.S. 418 (1979)("clear and convincing" evidence required); proceedings to terminate parental rights, Santosky v. Kramer, 455 U.S. 745, 768-770 (1982)(same); and deportation proceedings. Woodby v. INS, 385 U.S. 276, 285-86 (1966)(same). The interest of the defendant in each of these proceedings clearly is substantial. Competing public concerns, however, as well as the absence of penal sanctions, militate against a burden of proof that focuses solely on the defendant. A similar determination should be made by the Senate in this case.

IV. Conclusion.

Judge Claiborne contends that the consequences of his removal from office are grave. Yet surely the public interest in maintaining the integrity of the federal judiciary also is a matter of the utmost importance. The House of Representatives respectfully submits that, if it establishes by a preponderance of the evidence that Judge Harry E. Claiborne has violated the public trust by committing high crimes and misdemeanors, the Senate should remove him from office.

Respectfully submitted,

THE UNITED STATES
HOUSE OF REPRESENTATIVES

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V.D

IN THE SENATE OF THE UNITED STATES

Sitting as a Court of Impeachment

In re	)
	)
	)
IMPEACHMENT OF JUDGE	)
HARRY E. CLAIBORNE	)

OPPOSITION TO MOTION TO DISMISS ARTICLES OF IMPEACHMENT FOR FAILURE TO STATE IMPEACHABLE OFFENSES

The House of Representatives, through its managers and counsel, respectfully offers this opposition to Judge Claiborne's motion to dismiss the Articles of Impeachment on the ground that they fail to state impeachable offenses.

Judge Claiborne advances four reasons why the Senate should strike the Articles as invalid: first, that acts of "private" misbehavior, such as the tax fraud alleged in this case, do not provide grounds for impeachment; second, that the "high crimes and misdemeanors" standard of Article II of the Constitution, which was utilized by the House of Represen-tives in drafting the Articles, does not apply to federal judges; third, that impeachment requires, at a minimum, an offense of "moral turpitude" and tax fraud is not such a crime; and fourth, that, as drafted, the form, wording and styling of the Articles of Impeachment are constitutionally infirm.

Each of these arguments is contrary to established precedent and common sense. It would be absurd to conclude that a judge who committed murder, mayhem or rape in his "private" life could not be removed from office by the United States Senate. Nor is there any support for Judge Claiborne's position that federal judges are not civil officers of the United States subject to the impeachment clause of Article II of the Constitution. While the Constitution does not speak of "moral turpitude" as the test for impeachment, ample authority exists for the proposition that tax fraud in fact is such an offense of that character. Finally, the Articles of Impeachment allege separate and distinct offenses, properly pleaded by the House of Representatives.

The House of Representatives respectfully submits that Judge Claiborne's motion to dismiss the Articles of Impeachment should be summarily denied.

I. There is No Historical or Logical Basis for Distinguishing Between "Public" and "Private" Misconduct of Federal Judges for Purposes of Determining Impeachable Offenses

Judge Claiborne contends that the Senate's impeachment power does not reach misconduct, however reprehensible, by a public official acting outside the scope of his official duties. Indeed, Judge Claiborne goes so far as to argue that "[o]ffenses not immediately connected with office, such as murder, burglary and robbery are left to the ordinary course of judicial proceedings, while impeachment was historically left to misconduct in office." Motion to Dismiss, at 2. This argument is inconsistent with the established principle that acceptable judicial conduct is conduct which complies with judicial ethics on the bench and with criminal and civil laws off the bench. See The Federalist, No. 65, at 490 (J. Hamilton ed. 1866); J. Story, Commentaries on the Constitution of the United States, 559-60 (5th ed. 1891).

A review of the history of the impeachment provisions in the Constitution demonstrates the error in Judge Claiborne's argument. The same narrow view of impeachable offenses expressly was offered and rejected by the Framers of the Constitution.

The Constitutional Convention convened on July 20, 1787, to consider the impeachment provisions. As originally drafted, the impeachment clause provided that the President should be "removable on impeachment and conviction of malpractice or neglect of duty." 1 The Records of the Federal Convention of 1787 69 (M. Farrand ed. 1911)(hereinafter Farrand). The provision was subsequently revised to make the President impeachable for "treason, bribery or corruption." 2 Farrand, supra, at 185-86. On September 8, 1787, Colonel Mason moved to add the phrase "or maladministration" after "bribery." He argued that "maladministration" was already a ground for impeachment in five State constitutions. In response, James Madison objected that "maladministration" was too narrow a standard. Mason soon withdrew his amendment and substituted the phrase "or other high crimes and misdemeanors." This formulation was accepted, along with an amendment to extend the impeachment sanction to the Vice President and all other civil officers. Id., at 552. The Framers thus rejected, at two separate junctures, the concepts of professional "malpractice" or "maladministration" as the sole basis for the impeachment of federal officials.

The contrary position urged by Judge Claiborne is incompatible with common sense and the orderly conduct of government. Little can be added to the succinct argument of Representative Clayton in 1913 on this identical point, during the impeachment proceedings involving Judge Charles Swayne:

> If I understand the contention of the counsel for the respondent here, they insist that "high crimes and misdemeanors" and the words "the judges both of the Supreme and inferior courts shall hold their offices during good behavior" are limited or restricted to such acts as may be committed by a judge in his purely judicial capacity. In other words, however serious the crime, the misdemeanor, or misbehavior of the judge may be, if it can be said to be extrajudicial, he can not be impeached. To illustrate this contention, the judge may have committed murder or burglary and be confined under a sentence in a penitentiary for any period of time, however long, but because he has not committed the murder or burglary in his capacity as judge he can not be impeached. That contention, carried out logically, might lead to the very defeat of the performance of the function confided to the judicial branch of the Government.

Cong. Rec., 58th Cong., 3d Sess., at 3249-50. See also, Proceedings of the Senate and the House of Representatives in the Trial of Impeachment of Robert W. Archbald, S. Doc. No. 1140, 62d Cong., 3d Sess. 1061-62 (1913). As also noted in one commentary:

> An act or a course of misbehavior which renders scandalous the personal life of a public officer, shakes the confidence of the people in his administration of the public affairs, and thus impairs his official usefulness, although it may not directly affect his official integrity or otherwise incapacitate him properly to perform his ascribed functions.

Brown, "The Impeachment of the Federal Judiciary," 26 Harv. L. Rev. 684, 703-04 (1913).

Thus, Judge Claiborne's argument is both inaccurate and illogical in its extraordinary premise that a federal judge may intentionally commit a felonious act outside his judicial functions and automatically find protection from the impeachment sanction.

II. The Impeachment Standard Set Out in Article II of the Constitution Is Applicable to Federal Judges.

Judge Claiborne also contends that the phrase "high crimes and misdemeanors," found in Article II, Section 4 of the Constitution, does not apply to federal judges. There is no support for this novel argument.

Article II, Section 4 provides that "[t]he President, Vice President and all civil officers of the United States shall be removed from office on Impeachment for, and conviction of Treason, Bribery or other High Crimes and Misdemeanors." In addition, Article III, Section 1 states that federal judges shall hold office "during good behavior." Based on these provisions, Judge Claiborne contends that federal judges are subject only to the "good behavior" standard of Article III, and may not be impeached for "high crimes and misdemeanors." Again, this contention is inconsistent with constitutional history and established practice. Moreover, Judge Claiborne ignores the fact that each of the four Articles of Impeachment alleges that Judge Claiborne is guilty of "misbehavior" as well as of "high crimes and misdemeanors."

If lack of good behavior were the sole standard for impeaching federal judges, then a different standard would apply to civil officers other than judges. Nowhere in the proceedings of the Constitutional Convention was such a distinction made. On the contrary, the proceedings of the Convention show an intention to limit the grounds of impeachment for all civil officers, including federal judges, to those contained in Article II.

On August 20, 1787, a committee was directed to report on "a mode of trying the supreme Judges in cases of impeachment." The committee reported back on August 22 that "the Judges should be triable by the Senate." 2 Farrand at 337, 367. Several days later, a judicial removal provision was added to the impeachment clause. On September 8, 1787, the judicial removal clause was deleted and the impeachment clause was expanded to include the Vice President and all civil officers. 2 Farrand, supra, at 553. In so doing, the Constitutional Convention rejected a dual test of "misbehavior" for judges and "high crimes and misdemeanors" for all other federal officials.

In Federalist No. 79, Alexander Hamilton confirmed this reading of the Convention's actions with respect to the impeachment standard:

> The precautions for [judges'] responsibility, are comprised in the article respecting impeachments.... This is the only provision on the point, which is consistent with the necessary independence of the judicial character, and is the only one which we find in our Constitution with respect to our own judges.

The Federalist No. 79, at 513-14 (Mod. Lib. ed.).

Judge Claiborne's argument also confuses two distinct constitutional provisions that have markedly different purposes. At the time the Constitution was adopted, "good behavior" in England referred not to grounds for removal, but rather to the concept of life tenure. The distinction was noted in the debates. See 2 Farrand, supra, at 552. As described by one impeachment scholar, the "good behavior" formulation in Article III of the Constitution was similarly "employed to guard against legislative and executive tampering with the judiciary, not to insulate judges from removal when they misbehaved." Berger, "Impeachment of Judges and Good Behavior Tenure," 79 Yale L.J. 1475, 1513 (1970).

In prior impeachment proceedings, the Senate has been presented with Articles of Impeachment that utilized the "high crimes and misdemeanors" standard. The Articles in each of the eight impeachment proceedings through 1905 alleged "high crimes and misdemeanors." Six of these proceedings involved federal judges. In the four subsequent impeachments, the word "misbehavior" appeared either with "high crimes and misdemeanors" or with the abbreviated "misdemeanors in office." There is no precedent for Judge Claiborne's unique argument.

In short, constitutional history and practice dictate that federal judges are subject to removal by the standard set forth in the impeachment clause of Article II of the Constitution. The reference to "high crimes and misdemeanors" in the four Articles of Impeachment adopted by the House of Representatives clearly is appropriate.

III. The Articles of Impeachment are Not Infirm for Failing to Allege Crimes of Moral Turpitude.

Judge Claiborne further contends that "[a]cts which result from an error of judgment or omission of duty, without the presence of a willful disregard, are not impeachable." Motion to Dismiss, at 6. Judge Claiborne advances this proposition as yet another basis to dismiss the Articles of Impeachment. The argument is flawed, however, both on the law and on the facts of this case.

Before considering Judge Claiborne's legal argument, it is noteworthy that the conduct alleged in the Articles of Impeachment satisfies the very standard that Judge Claiborne advocates. Articles I and II allege that Judge Claiborne "willfully and knowingly" made false statements on his 1979 and 1980 federal income tax returns, in violation of section 7206(1) of title 26, United States Code. Thus, the House of Representatives has alleged conduct entailing an intentional act of fraud, or, in Judge Claiborne's words, a "willful disregard."

Judge Claiborne further contends that misconduct, to be an impeachable offense, must be a crime of moral turpitude. The Constitution does not, however, set forth such a standard. Impeachment is proper for "treason, bribery and other high crimes and misdemeanors." Under the literal language of the terms employed, a felony under the laws of the United States is a "high crime and misdemeanor" and thus an impeachable offense. Indeed, in convicting Judge Halsted Ritter in the most recent impeachment proceeding, the Senate relied on evidence of tax fraud as a basis for removal from office.

The factual allegations in Articles I and II directly track the elements of criminal tax fraud set forth in 26 U.S.C. §7206(1). One of those elements is the willful filing of a false return with specific intent to violate the law. See United States v. Marabelles, 724 F.2d 1374, 1385 (9th Cir. 1984). The Articles of Impeachment thus allege intentional acts of fraud. Along with treason and bribery, such an act is precisely the type of offense that has been singled out as "impeachable" conduct since the earliest English precedents. Intentional acts of fraud strike directly at the bond of trust between the body politic and a public official.

Finally, there is ample support for the proposition that Judge Claiborne indeed has committed a crime of moral turpitude. Federal and state courts have ruled that a crime in which fraud is a necessary ingredient constitutes an act of moral turpitude. Jordan v. DeGenge, 341 U.S. 227 (1951). More specifically, violations of 26 U.S.C. §7206(1) expressly have been held to be crimes of moral turpitude, sufficient to support the suspension or disbarment of an attorney from the practice of law. See United States v. Friedland, 502 F. Supp. 611 (D.N.J. 1980); In re Scott, 455 N.E.2d 81 (1983); Attorney Grievance Commission of Maryland v. Deutch, 450 A.2d 1265 (1982); Kentucky Bar Association v. Pope, 549 S.W.2d 296 (1976).

The United States Congress already has determined the seriousness of the crime of tax fraud. In making that offense a felony, Congress has announced the importance of voluntary compliance with our tax laws. However serious the offense may have been in the eyes of Judge Claiborne, there is no legitimate basis for his claim that tax fraud is not a "high crime and misdemeanor," sufficient to warrant his removal from office.

IV. The Articles of Impeachment Are Not Otherwise Deficient.

Judge Claiborne lastly contends that the four Articles of Impeachment are "infirm" because they are "multiplicitous and duplicitous." Motion to Dismiss, at 5. A similar argument was made in the impeachment proceedings of Judge Ritter. There, Judge Ritter moved to strike the Articles as failing to allege distinct and proper offenses. He argued that because two separate Articles embraced identical allegations, he would be "twice required" to defend against the charges. The Senate denied the motion. Deschler's Precedents, ch.14, §18.12 at 688-89.

The four Articles of Impeachment brought against Judge Claiborne are separate and distinct. Article I sets forth the facts underlying the indictment, trial and conviction of Judge Claiborne for willfully and knowingly filing a false federal tax return for the tax year 1979. Article II does the same for the tax year 1980. Article III rests entirely on the conviction itself and, as the House Report accompanying H. Res. 461 explains: "[it] stands for the proposition that when a federal judge is convicted of a felony and has refused to vacate his office, he has misbehaved in office and by his conviction alone ... is guilty of having committed 'high crimes' in office." H.R. Rep. No. 99-688, 99th Cong., 2d Sess. 22 (1986). Article IV alleges that, as a consequence of the allegations set forth in the first three Articles, Judge Claiborne has brought "the entire federal judiciary into disrepute, thereby undermining public confidence in the integrity and impartiality of the administration of justice." Id., at 23.

Each of the Articles are proper for consideration by the Senate. In conclusion, an early observation of Alexander Hamilton in The Federalist Papers is worth repeating:

> The necessity of a numerous court for the trial of impeachments is equally dictated by the nature of the proceeding. This can never be tied down by such strict rules, either in the delineation of the offense by the prosecutors, or in the construction of it by the Judges, as in common cases serve to limit the discretion of courts in favor of personal security.

V. Conclusion

The House of Representatives respectfully requests that the Senate deny Judge Claiborne's motion to dismiss the Articles of Impeachment on the grounds that they fail to state impeachable offenses.

Respectfully submitted,

THE UNITED STATES
HOUSE OF REPRESENTATIVES

By Nicholas D. Chabraja
Nicholas D. Chabraja
Special Counsel

Managers of the House of Representatives

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Robert W. Kastenmeier
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Warren S. Grimes, Counsel
Joseph V. Wolfe, Counsel
Jonathan R. Yarowsky, Counsel

IN THE SENATE OF THE UNITED STATES
Sitting As A Court Of Impeachment

In re)
)
)
)
IMPEACHMENT OF JUDGE)
HARRY E. CLAIBORNE)

OPPOSITION TO MOTION FOR BILL OF PARTICULARS

The House of Representatives, through its managers and counsel, respectfully offers this opposition to Judge Claiborne's motion for a bill of particulars with respect to Article IV of the Articles of Impeachment.

The House of Representatives already has stated that it will present no additional evidence in support of Article IV. See Pretrial Statement of the House of Representatives, at 11-12 (filed August 28, 1986). The House cannot be more specific than to state that no additional information will be offered.

It is the position of the House of Representatives that, by engaging in the conduct alleged in Articles I, II, and III of the Articles of Impeachment, Judge Claiborne has brought disrepute to the federal judiciary. Such an allegation has been found to be a sufficient basis to justify the conviction of a federal judge in an impeachment proceeding.* No matter how able, popular or dedicated Judge Claiborne may have been as a jurist, as a convicted felon, drawing his salary while in prison, Judge Claiborne has brought disrepute upon the federal judiciary. Nothing more need or will be said by the House of Representatives.

Respectfully submitted,

THE UNITED STATES
HOUSE OF REPRESENTATIVES

By

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* In 1936, Judge Halsted L. Ritter was convicted by the Senate for bringing his court into scandal and disrepute by filing false income tax returns.

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Jonathan R. Yarowsky, Counsel

V.F

IN THE SENATE OF THE UNITED STATES

Sitting As A Court Of Impeachment

In re)
)
)
)
IMPEACHMENT OF JUDGE)
HARRY E. CLAIBORNE)

OPPOSITION TO MOTION FOR DISCOVERY

The House of Representatives, through its managers and counsel, respectfully offers this opposition to Judge Claiborne's motion for discovery.

None of the materials sought by Judge Claiborne are in the possession of the House of Representatives. Thus, Judge Claiborne seeks material that is held solely by non-parties to this proceeding.

There is no reason for the Senate to allow Judge Claiborne to utilize an impeachment proceeding to secure documents that he otherwise could not obtain from a federal grand jury or from the Executive Branch. The issues in this impeachment proceeding have been precisely identified. All witnesses may be interviewed directly for information that may be relevant to the issues raised by the Articles of Impeachment. If Joseph Wright, Constance Wright, Charlotte Travaglia, or any other witness has information that is exculpatory to Judge Claiborne, the witness may be subpoenaed for any trial deemed necessary by the Senate.

Moreover, Judge Claiborne already has been provided with prior statements of the witnesses that the House of Representatives will present at trial. Pursuant to the Jencks Act, 18 U.S.C. §3500, Judge Claiborne was provided at his criminal trial with a broad range of material, *including grand jury testimony*, concerning Joseph Wright, Constance Wright, and every other witness presented by the government. These are the same witnesses upon whom the House of Representatives will rely in this impeachment proceeding.

Compelling reasons support the principle of grand jury secrecy. *See* *United States* v. *Proctor & Gamble Co.*, 356 U.S. 677, 681 (1958). Since all relevant witnesses remain available to be questioned directly, there is no reason to intrude on the respected sanctity of the grand jury process. An impeachment proceeding should not be used as an opportunity for a defendant in a criminal proceeding to secure discovery that otherwise would not be available.

Judge Claiborne does not identify in his motion for discovery any specific document that he seeks, or any reason why the information at issue cannot be secured directly from the witnesses involved. The House of Representatives submits that the Senate should not embark on a charterless expedition in search of evidence of the purported oppression of Judge Claiborne.

Respectfully submitted,

THE UNITED STATES
HOUSE OF REPRESENTATIVES

By

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V.G

IN THE SENATE OF THE UNITED STATES

Sitting As A Court Of Impeachment

In re	)
	)
	)
	)
IMPEACHMENT OF JUDGE	)
HARRY E. CLAIBORNE	)

OPPOSITION TO MOTION TO DECLARE SENATE IMPEACHMENT RULE XI UNCONSTITUTIONAL

The House of Representatives, through its managers and counsel, respectfully offers this opposition to Judge Claiborne's motion to declare Senate Impeachment Rule XI unconstitutional.

The House of Representatives stands ready, under any rules and procedures adopted by the Senate, to present evidence and argument in support of each of the four Articles of Impeachment voted unanimously against Judge Claiborne. The House will proceed before either a Committee or the full Senate, as the Senate shall direct. The House respects the judgment of the Senate in the latter's exercise of its exclusive responsibility to conduct an impeachment trial.

The House of Representatives further submits that Senate Impeachment Rule XI, which provides for evidence to be received by a Committee of Senators, sets forth a procedure that is within the sound discretion of the Senate in conducting an impeachment trial. The Constitution of the United States provides that "[t]he Senate shall have the sole power to try all impeachments." Article I, Section 3. The Constitution does not dictate the manner in which the trial shall be conducted, apart from its command that "no person shall be convicted without the concurrence of two-thirds of the Members present." Id. Consistent with its sole power to conduct an impeachment trial, the Senate has the inherent authority to fashion rules that govern the admissibility of evidence, the scope of the proceeding, and the manner, form and location in which evidence will be received. The House of Representatives itself has contended that such authority includes the power to recognize and credit a judgment of conviction entered in a full, regular, and proper proceeding. See Motions #1 and #2 of the House of Representatives (filed August 28, 1986).

The House of Representatives submits that Senate Impeachment Rule XI falls within the broad power of the Senate to govern impeachment proceedings.

Respectfully submitted,

THE UNITED STATES
HOUSE OF REPRESENTATIVES

By

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Jonathan R. Yarowsky, Counsel

SENATE IMPEACHMENT TRIAL COMMITTEE

Appointed Upon the Adoption of Senate Resolution 481, August 14, 1986, 99th Congress, 2d Session, Pursuant to Rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials

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MONDAY, SEPTEMBER 15, 1986

U.S. SENATE,
SENATE IMPEACHMENT TRIAL COMMITTEE,
Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m., in room SR-322, Russell Senate Office Building, Hon. Charles McC. Mathias, Jr., chairman of the committee, presiding.

Present: Senators Mathias, Sarbanes, Hatch, Warner, Rudman, Pressler, McConnell, Heflin, DeConcini, Pryor, Gore, and Bingaman.

Managers and counsel from the House of Representatives present: Peter W. Rodino, Jr., Robert W. Kastenmeier, William J. Hughes, Romano L. Mazzoli, Dan Glickman, Hamilton Fish, Jr., Henry J. Hyde, Thomas N. Kindness, Michael DeWine, Nicholas D. Chabraja, special counsel; and David DeBruin, associate special counsel.

House Judiciary Committee staff present: M. Elaine Mielke, general counsel; Alan F. Coffey, Jr., associate general counsel; Judith Bailey, counsel; Daniel M. Freeman, counsel; Gary G. Goldberger, counsel; Warren S. Grimes, counsel; Joseph V. Wolfe, counsel; and Jonathan R. Yarowsky, counsel.

Respondent and counsel present: Hon. Harry E. Claiborne, Oscar Goodman, counsel; Senator Howard Cannon, counsel; Michael V. Stuhff, associate counsel, and David Z. Ctteznoff, associate counsel.

Staff present: Michael Davidson, counsel; Floyd M. Riddick, consultant; John B. Childers, staff director; John F. Rixey, Jr., deputy staff director; Anthony L. Harvey, clerk; Byron F. Hoover, assistant clerk; Gerald R. Gereau, security coordinator; Ann Pincus, press liaison; and Randy Dove, press liaison.

The CHAIRMAN. The committee will come to order.

In the last session of the committee, it was directed that counsel on behalf of the managers and counsel on behalf of the defendant should be prepared today to argue the motion in limine, the motion which deals with prosecutorial and judicial misconduct in the course of these proceedings.

Mr. Goodman, are you prepared to go forward with that argument?

Mr. **Goodman**. Yes, Mr. Chairman.

The **Chairman**. Mr. Chairman, are you prepared?

Mr. **Chabraja**. Mr. Glickman on behalf of the House managers will go forward, Mr. Chairman.

The **Chairman**. It was agreed that there would be a half hour for this argument to be equally divided, 15 minutes a side.

Mr. Goodman is recognized.

Mr. **Goodman**. Yes, Mr. Chairman.

With the Chair's permission, my client is present, but he has not yet arrived. I respectfully request that he be present during this argument.

The **Chairman**. Is he on his way to the hearing room?

Mr. **Goodman**. He should be. When we last saw him, we were advised that in fact he would be brought.

The **Chairman**. We will suspend until Judge Claiborne arrives.

Mr. **Goodman**. Thank you.

The **Chairman**. Mr. Goodman, will you proceed?

Mr. **Chabraja**. Mr. Chairman, it seems to me that it is our motion.

The **Chairman**. Mr. Chairman, you go forward.

Mr. **Rodino**. Mr. Glickman will argue the motion for the managers of the House.

Mr. **Glickman**. Good morning. Mr. Chairman, Mr. Vice Chairman and members of the committee, on behalf of the House managers this morning, I am offering a motion *in limine* to exclude irrelevant evidence proffered by Judge Harry E. Claiborne, and that motion has been accompanied by a memorandum in support of the motion which you have before you.

In virtually all of Judge Claiborne's pleadings, he asks the Senate to grant him a full evidentiary hearing on an extraordinary number of issues, ranging from the underlying merits of tax fraud convictions to claims that Chief Justice Warren Burger and FBI Director William Webster were allied in a massive conspiracy to get him off the bench. He urges the Senate to ignore completely the proceedings in the Federal courts.

It is the contention of the House that the Senate should not be forced to expend its time on empty, unsubstantiated rhetoric, much of which is desperate and raised since Judge Claiborne has been incarcerated, to spend its time on conclusionary allegations or claims that do not concern the integrity of the fact-finding process.

We submit that as the body with the sole power to try all impeachments, the Senate has the power to establish the scope of this proceeding. We believe that the scope should be directly related to the primary and over-riding issue: Did Judge Claiborne willfully underpay his taxes? A jury of his peers answered in the affirmative, and it is our opinion that that is the scope of what the Senate's inquiry should be.

In establishing the scope, we urge the Senate to exclude the following evidence that has been proffered by Judge Claiborne in his pretrial statement and which we believe is irrelevant. We have identified that in our motion, but I would briefly indicate what the evidence is.

One, all evidence offered in an attempt to show that the judicial branch of Government participated in a conspiracy to remove

Judge Claiborne from the Federal bench by engaging in a sinister form of court-packing or other judicial misconduct. And we would ask that you exclude the evidence that we have included in our motion in that regard.

Two, all evidence offered to show the motivations of those who investigated and prosecuted him in the prior criminal proceedings, including evidence suggesting that, but for the improper targeting by the executive branch of government, he would not have been caught on the tax charge.

No. 3, all evidence offered to show the manner in which the testimony of Joseph Conforte was obtained and the truthfulness of that testimony.

No. 4, all evidence offered in an attempt to show that the government's agencies burglarized Judge Claiborne's home or conducted other covert surveillance, such as a mail cover, and five, all evidence offered in an attempt to show his general character and reputation.

In support of my motion, I would briefly argue the following: No. 1, Senate rules governing impeachment proceedings empower the Senate to exclude irrelevant evidence. The Senate rules are consistent with rules governing the introduction of evidence in Federal courts. Rule 402 of the Federal Rules of Evidence provides that evidence which is not relevant is not admissible. That is a fundamental fact in American jurisprudence. We would urge you to follow that as you consider this case.

We respectfully submit that much of the evidence proffered in Judge Claiborne's pretrial statement does not make the existence of facts that are of consequence to the Articles of Impeachment more or less probable. The ultimate issue presented by each of the four articles is whether Judge Claiborne has engaged in conduct that has violated the public trust. Much of the evidence proffered by Judge Claiborne concerns matters such as whether he should have been caught for his crimes; whether the motivations of the parties who investigated and prosecuted his case were pure; whether a grand conspiracy, ranging from the Chief Justice of the United States to the Director of the FBI, existed against him; whether government agents acted improperly in securing the incriminating evidence that established his guilt; and whether he enjoyed a favorable reputation as a man and as a judge.

We submit that none of these matters make any of the issues alleged in the Articles of Impeachment more or less probable. As a result, the Senate should exercise the authority set forth in its own rules to exclude this evidence. I would like to briefly go through each of the five subarguments in the motion.

One, Judge Claiborne is trying to get you to look at evidence offered in an attempt to show that the judicial branch of Government participated in a conspiracy, a sinister form of court-packing, or other judicial misconduct. He contends that this conspiracy existed against him which extended to the judicial branch of government. In his own statement, he argues, "We are confronted with a particular sinister form of court-packing in which a particular ideological and political clique in the executive and judicial branches have joined forces to remove a judge." He contends that judges were intimidated and failed to even read his briefs.

In tendering these broad accusations, he makes no specific allegations of misconduct or offers of proof to support his claim. I will repeat that: No specific allegations of misconduct. He offers no hint of evidence of the conspiracy, no specific proof the judges in fact were cowed by the executive branch. There is not the slightest concrete evidence of personal bias on behalf of any member of the judiciary. There is no concrete evidence. And in the absence of specific allegations and proof, we in the House do not believe that you in the Senate need to consider the relevancy of these claims.

This is an impeachment trial. It need not provide a forum in which Judge Claiborne may search for evidence to substantiate wild and paranoid theories of Government oppression. Therefore, we would urge you to exclude that evidence.

No. 2, evidence offered in an attempt to show the motivations of the persons who investigated. He offers—in this regard, he suggests that he was subject to improper targeting by the executive branch. In fact, he implies that if he had not been targeted, he would not have been caught.

This argument, we believe, is without merit. The House of Representatives submits that the motives of the parties who investigated and prosecuted Judge Claiborne are irrelevant in an impeachment proceeding. If he in fact committed tax fraud, the mind or the animus or the motivation of the parties who uncovered and presented the evidence does not undermine the fact that he has violated the public trusts.

In essence, this claim is one that we say in the House "I should not have been caught." Certainly such a contention has no place in an impeachment inquiry.

The same conclusion follows with respect to Judge Claiborne's claim of selective prosecution. The fact that another citizen may or may not have been prosecuted does not make him any less guilty. Prosecutors legitimately have broad discretion in determining when to institute a criminal proceeding. Courts will not overrule an exercise of that discretion unless it discriminates against a suspect class. Moreover, the prosecution did not render a verdict in his case. He was found guilty by his peers. Thus, the mind, the motivation of those who brought the case, we believe, is irrelevant for your purposes. Again, your purpose is to determine did he willfully violate the public trust by understating his income.

The third area that we would like to have excluded is evidence offered in an attempt to show the manner in which the testimony of Joseph Conforte was obtained and the truthfulness of that testimony. Many pages of his pre-trial statement allege Government misconduct in the use of Joseph Conforte as a witness against Judge Claiborne. This evidence is irrelevant because this gentleman, Joseph Conforte, was not a witness at his second trial where he was convicted. He has nothing to offer with respect to the filing of the 1979 and 1980 tax returns.

Now, Judge Claiborne also argues, assuming it is relevant, and we do not believe it is, that the jury in the first trial did not reach a verdict on any count and that the Government then moved to dismiss the Conforte allegations. The House of Representatives submits that what is relevant is this: That at the second trial, which had nothing to do with Conforte allegations, a jury unanimously found Judge Claiborne guilty of two tax fraud charges.

Now, Judge Claiborne also contends that Mr. Conforte, this witness, infected the grand jury that indicted Judge Claiborne on tax charges. We believe that contention is disingenuous. The jury at trial, the second trial, not influence by Mr. Conforte—they never even saw this man—found Judge Claiborne guilty beyond a reasonable doubt. And as such, there is no evidence to believe, no reason to believe that a grand jury would not have found that sufficient evidence existed to warrant an indictment. Therefore, we believe that these claims are irrelevant and should be ignored.

Fourth, we believe that you should exclude evidence intending to show that the Government agents burglarized Judge Claiborne's home or conducted other covert surveillance such as a mail cover. Now, Judge Claiborne claims that the Government agents did a black-bag job on his home in search of evidence. He claims to have been subject to a mail cover, a victim of a mail cover, although he does not identify any evidence, no evidence introduced by the Government at trial that was secured through an unlawful search and seizure. There is none. He contends that these actions shock the conscience and compel dismissal of the proceedings.

Now, the Department of Justice has filed an extensive pleading rebutting Judge Claiborne's factual allegations. They have no basis in fact. None have been offered. Nothing in the trial record was suppressed. There has been no factual case made of any illegal search and seizure. They are removed, in fact, from either his conduct or the jury's assessment of guilt or innocence. They concern, at best, hypothetically, police misconduct in the manner in which the evidence was secured. They involve claims that, if proved, could warrant an application of the exclusionary rule in a judiciary proceeding.

We would again point out there is nothing in fact here. These are wild allegations or assertions, never proven at any stage of the trial process whatsoever. And even if they were—and we contend that they have not been proven, and so you need not even consider them—the exclusionary rule has no place in an impeachment proceeding. The rule, as created by the judiciary, is designed primarily to deter police misconduct and is not a personal constitutional right to the party aggrieved. Therefore, we believe that there is no reason for the Senate to spend any time on these allegations.

Finally, we urge you to not allow evidence intending to show Judge Claiborne's general character and reputation. He has submitted a lengthy list of witnesses. We do not contend that he is an evil man without redeeming qualities. Indeed, the record of his life career suggests that for many years he did many things to commend himself. But the issue here, the Articles of Impeachment, rests on allegations that he chose to willfully defraud the Government on two tax returns, 1979 and 1980. The jury heard the evidence, found him guilty beyond a reasonable doubt, and as a result of these facts, he has brought disrepute on the Federal judiciary.

I am aware, Mr. Chairman, that you have made some statements in your rulings that allow some witnesses to be subpoenaed on behalf of Judge Claiborne. We again indicate that it is our belief that it is not relevant; that if you do allow those character testimonials, we hope that they could be submitted best by letter in terms of the amount of time at trial that those witnesses would take.

In closing, these matters raised by Judge Claiborne have no impact on the fact-finding case. The Senate of the United States is not required to conduct a full evidentiary hearing on the basis of completely unsubstantiated and conclusory allegations. The real issue is the tax fraud case, not the smoke that clutters most of Judge Claiborne's pleadings. And the issues of the tax fraud case were placed squarely before the jury; he lost.

The Senate may choose to try this case again, but it is the House of Representatives' hope and plea that it should do so on matters relevant to the proceedings and to the tax fraud case.

Thank you.

The CHAIRMAN. Thank you, Mr. Glickman.

Mr. Goodman.

Mr. GOODMAN. Mr. Chairman, honored Committee members, gentlemen, Judge Claiborne, a weekend sometimes provides the opportunity to get one's thoughts in order and to put everything in perspective. I utilized this long weekend for the purposes of ascertaining in my own mind what this proceeding is all about.

Sometimes attorneys feel that they engage in cliches because aspects of our Government are taken for granted and the true meaning of procedures are forgotten, especially in a situation such as an impeachment that comes along so infrequently.

Yesterday morning, I took a walk with my colleagues to the Jefferson Memorial, and I saw the statue of Thomas Jefferson and the commentary of this gentleman upon whom we are relying so much as far as the philosophy of our system of Government. Today, gentlemen, comes the test as to whether or not our system of Government, which is being broadcast to this entire Nation, is going to address basic constitutional issues going to the separation of powers, going to concepts of fundamental fairness, going to concepts of due process. And it should be understood that these proceedings are adversary proceedings. This is a trial de novo because the only body in this great country of ours who has the authority to try an impeachment is the U.S. Senate. And the House of Representatives, although acting in a spirit which they believe is appropriate, are in fact the prosecutors in this particular case and are attempting to obtain a conviction. That is their objective.

We must keep in perspective that your judgment is an independent judgment. It is not a judgment which is based or should be based on the thought processes of other individuals such as 12 jurors who heard a set of facts under a particular set of circumstances, where limitations were placed on them by a trial judge. Because this proceeding is a new proceeding, even though the House, through its managers, would have you convict Judge Claiborne by ascertaining the conviction on article III of the Articles of Impeachment, would be grounds in and of themselves to do so.

Now, that particular concept runs contrary to their theory of the presentation of evidence which you gentlemen should consider. Because if in fact a conviction on article III was obtained as a result of a violation of Judge Claiborne's due process rights, if in fact the prosecution was unconscionable, if in fact the testimony of the witnesses were shaped in such a matter because of the animus of the prosecution that a true and just verdict should not be reached, then you, as the independent, sole source to make the determination, would be abdicating, with all due respect, your responsibility to make an independent judgment as to whether or not Judge Claiborne acted in a manner which would be consistent with the finding that impeachment is appropriate.

If you carry out your independent, constitutionally sworn duty, I submit that the evidence which you would have to consider would have to go to the state of mind of the prosecution as well as the state of mind of Judge Claiborne. Because the state of mind, the animus of the prosecution, shapes the testimony of its witnesses, causes pressure to be brought upon its witnesses, causes the witnesses to be intimidated, and that is the evidence that was heard in another proceeding.

As to articles I and II, the fact articles, it is incumbent upon the House, through its managers, to prove by whatever standard the Senate is going to adopt—that a preponderance of the evidence, beyond a reasonable doubt, whatever—that in fact Judge Claiborne has the requisite mental state of mind which would cause his conduct to be willful. And we submit that based on the entire chronological scenario which has taken place, from the very moment that Judge Claiborne became an article III judge, representing a separate and independent branch of the Government, on September 1, 1978, from that moment forward he was involved in a constant embroilment with representatives of the Executive. It did not start when he took the bench. It had already been in existence in Nevada where one Federal judge indicated that the prosecutor in Nevada suffered from a schizophrenia; where another Federal judge took himself off of all strike force cases because of the animus that existed in Nevada at that point in time. On April 4, 1980, as I indicated here last week, just a week before the crucial letter that Judge Claiborne wrote to his tax preparer was sent and delivered by his secretary, on April 4, an unprecedented search and seizure took place in the strike force's office in Las Vegas which one judge said contained contemptuous caricatures, caricatures of the judiciary which were placed in an intimidating fashion on the walls of the strike force, characterizing Judge Claiborne as the Ayatollah and the other Federal judge in Las Vegas as a clown.

It was at that point in time that the judge was preparing the information which he was going to send to his tax preparer. Thereafter, headlines that same week took place indicating that Judge Claiborne was the target of a grand jury investigation in Las Vegas. That very day Judge Claiborne lashed out, and he said he was not going to permit the citizenry of Nevada to be run roughshod over. He received a phone call from his accountant, Mr. Wright, and Mr. Wright said, "Tell me what you earned. We have to file your tax work today. Get it over to us." The judge wrote an $8,000 check. He sent over his W-2 on April 11 with that check, and he provided the information virtually to the penny of the moneys which the House is saying that he omitted from disclosure to his tax preparer.

And I submit to you that based on that type of background, only a fool would engage in activity which would be a red flag to a government which was stalking him. And that did not discontinue. I recognize my time is short and this is not the time for a closing argument, but that did not discontinue. That same type of conduct, where persons in the community were being sought to testify against Judge Claiborne, to lie against Judge Claiborne, who were being indicted in exchange for a dismissal if they would testify against Judge Claiborne, unconscionable deals were made with fugitives of justice—$15 million in taxes were excused from a man who was facing a habitual life imprisonment term. Unconscionable. Maybe unprecedented in the history of our country as far as an effort by the Executive to silence a judge who spoke up against them as they are representing the citizenry who was before him when they appeared. And it was under that same set of circumstances where this pressure did not cease. It did not cease up until this very day, not until this very day when the judge stands before you seeking a fair and full trial. He has been under this constant harassment, and it was within that context that the judge provided the information to Jerry Watson. Apparently, that is not disputed at this point in time, that he told Watson he earned $88,500, which was $600 more than he earned from his private practice. And I submit to you that that is the type of evidence which must be considered by you if you are to fulfill your function independently to provide him with a fair trial.

Our complaints about the judiciary are not in a vacuum. They are set forth with specificity in the reply which we filed with this honorable committee this morning and which I hope you will take the occasion to review.

Judges have taken the position that the judiciary abandoned one of their own for fear that they might be criticized and did not review the information which was available to them on the appellate level; but, rather, did not even unseal the documents which Judge Claiborne indicated contained exculpatory material which could have resulted in a different verdict, a verdict of not guilty, which would have perhaps precluded him from appearing here today.

As to the last matter, that of character witnesses, there was a certain tone--and I say it respectfully, but I also say it knowing that we are in an adversary proceeding. There was a certain tone last week on the House side that perhaps the judge's frequenting casinos in Nevada and cashing checks in casinos in Nevada represented some type of untoward or unseemly conduct. I suggest to you that the character witnesses which we will bring before you today will be Nevada citizens, former prosecutors, defense attorneys, members of the community, who, after you hear their testimony and you judge their credibility and judge their demeanor, you will conclude that the way they characterize Judge Claiborne is necessary and crucial to the appropriate determination by the U.S. Senate in these impeachment proceedings, because they will depict him as a brave man, as a man of principle, as a scholar, as a man who defends the rights in which he believes, the same rights and principles which I saw yesterday at the Jefferson Memorial.

The **Chairman**. Mr. Goodman, let me ask you a question. If the Senate were to accept Judge Claiborne's position that there had been prosecutorial and judicial misconduct in the criminal case, and if, as a result of that, some evidence that is offered by the managers were to be excluded, exactly what is it in your judgment that should be excluded?

Mr. GOODMAN. The discussion, Mr. Chairman, last week was whether or not the exclusionary rule would be applicable in proceedings such as this.

The CHAIRMAN. I am asking you to consider hypothetically that we might apply the exclusionary rule, and if we did under those circumstances, what evidence offered by the managers on the part of the House would you exclude?

Mr. GOODMAN. The answer is very simple. All of the evidence. And the reason that I take that position is that if we were able to carry our burden as far as an exclusionary situation is concerned, it would involve the exclusion of a particular piece of paper which we believe was taken from the judge's home in an illegal search and seizure. And if in fact we are correct, and if in fact the witnesses testify that a break-in took place, it was from that break-in that the entire investigation as to the tax years of 1978, 1979 and 1980 was initiated.

Before that time, it would be our position that the inevitable discovery doctrine would not be applicable, that the prosecution in the criminal proceedings would not have gone forward as far as the taxes are concerned, and certainly this proceeding would not have been initiated by the House because there would not have been a criminal prosecution had we been able to do that at the judicial level.

The CHAIRMAN. Thank you, Mr. Goodman.

Mr. GOODMAN. Thank you, sir.

The CHAIRMAN. The committee will take the motion in limine under advisement.

We will now proceed to the opening statements not to exceed one-half hour each. The managers will begin, and the Chair will recognize on the part of the managers Peter W. Rodino, Representative from New Jersey.

Mr. RODINO. Mr. Chairman, members of the committee, it is the solemn constitutional responsibility of the managers on the part of the House of Representatives to present this case against Judge Harry E. Claiborne. It is not a responsibility which we relish. However, under the Constitution, the impeachment procedure is the only way Judge Claiborne, who has been convicted of a felony and who is currently serving a prison sentence, can be removed from the office he holds as a judge of the U.S. district court.

In that connection, it is my duty to present this statement to advise the Senate of what we believe the worthy evidence in the case will show. The records of Federal court proceedings of which the Senate has already taken evidentiary notice reveal that Judge Claiborne was convicted in August of 1984 by a jury of his peers of intentionally filing a false income tax return for each of the years 1979 and 1980. He was fined and sentenced to 2 years in prison.

Implicit in his conviction was the jury's belief that Judge Claiborne's trial testimony was perjured. His appeal to the ninth circuit court of appeals was denied. The U.S. Supreme Court denied his petition for a writ of certiorari.

The conviction stands as a final judgment, and the facts remain as the jury found. Accordingly, Judge Claiborne entered a Federal penal institution on May 16, 1986.

The House of Representatives, on July 22, 1986, voted to impeach Judge Claiborne on four Articles of Impeachment by a unanimous vote of 406 to zero. The House does not treat impeachment lightly. This is only the 13th time the House has voted Articles of Impeachment. But we simply cannot permit a convicted felon to sit on the Federal bench and make judgments about others. A judge must be a symbol of integrity and beyond reproach.

In this trial, the House managers will prove that Judge Claiborne should be convicted and permanently removed from office. Both the underlying acts of tax evasion and the criminal conviction for these acts separately provide grounds for the Senate to find him guilty on all four Articles of Impeachment, although conviction on any one of the articles alone is sufficient to remove him from office.

The facts that the jury had to find in order to convict Judge Claiborne and the facts that we will prove are substantially as follows:

Judge Claiborne had a lucrative private practice specializing in criminal law prior to being appointed to the Federal judiciary on September 1, 1978. After his elevation to the bench, he continued to receive legal fees for work he had done before he became a judge. It was this fee income that he understated on his 1979 Federal income tax return and that he failed to report in its entirety on his 1980 Federal income tax return.

The evidence to be addressed at this trial will reveal that in 1979, Judge Claiborne received $41,073.93 in legal fees. He only reported $22,332.87 of that sum on his form 1040, schedule C, intentionally under-reporting his income by $18,741.06.

The judge had his 1979 income tax return prepared by his accountant and his long-time friend, Joseph Wright, a former president of the Nevada Society of Public Accountants and the man who had handled the judge's bookkeeping and prepared his tax returns for 30 years. Mr. Wright will testify before you. He will tell you that Judge Claiborne had his bank statements and bank deposit records sent to Mr. Wright directly by the bank in the years prior to 1979. His instructions from Judge Claiborne were to treat all deposits reflected on the bank statements as legal fee income for tax purposes unless otherwise advised by the judge.

Both Mr. Wright and Judge Claiborne will testify, we believe, that the judge always deposited all of his fee income to his bank account prior to 1979. In 1979, Judge Claiborne stopped having his bank statements sent to Mr. Wright. Further, he never gave Mr. Wright his bank records for 1979. Mr. Wright will tell you that the only information he had for 1979 concerning Judge Claiborne's income from legal fees was what the judge told Mr. Wright both orally and in writing.

Mr. Wright had no other source of information. The first important piece of documentary evidence relating to the tax year 1979 is a document already admitted into evidence as House exhibit 17, a memorandum Judge Claiborne sent Mr. Wright in early March 1980 listing his income from legal fees received in 1979 as $46,371.93. Judge Claiborne provided this information to Mr.

Wright together with an oral request that Mr. Wright provide the information to several mortgage companies. The memorandum identified fee income from deposits consistent with Judge Claiborne's long-standing practice. The handwritten memo identifies each separate fee he supposedly received in 1979 and states that the list is accurate.

In fact, though, this list is incorrect. It contains reference to several deposits that were not made up of fee income and failed to list several fees that Judge Claiborne had received. It is not anticipated that this point will be in dispute. But importantly, Mr. Wright will also testify that after May 22, 1980, when the last of the letters to the mortgage companies had been sent, Judge Claiborne had a conversation with Mr. Wright and told him that he had made a mistake in his earlier memorandum. He said that not all the deposits listed on that memorandum were legal fees. Judge Claiborne reviewed each deposit listed on the memorandum, telling Mr. Wright which deposits represented fee income and which deposits did not.

When Judge Claiborne finished his review, he had identified $22,332.87 for Mr. Wright as being his total fee income for 1979. Judge Claiborne told Mr. Wright he had no other legal fee income for 1979.

Now, we do not have to rely exclusively on Mr. Wright's memory of that conversation. Mr. Wright also kept notes. He recorded the information Judge Claiborne conveyed to him on the face of the memo, exhibit 17. Subsequent to this conversation, Judge Claiborne sent Mr. Wright another handwritten memo, House exhibit 21, listing his fee income as $22,332.87. This memo was written for the purpose of supplying Mr. Wright with information for the preparation of the 1979 tax return. The evidence will show that Wright listed this figure on schedule C of the Judge's Federal income tax return which the Judge signed, certifying under penalty of perjury that the information contained in it was correct.

However, the direct evidence and reasonable inferences to be drawn from circumstantial evidence will prove by a preponderance of the evidence or by any other standard the Senate should adopt that the judge knew that his actual fee income was approximately $41,000 and that he had engaged in a pattern of conduct designed to conceal his true income both from his accountant and the Internal Revenue Service.

In 1979, Judge Claiborne received a total of 14 checks for legal fees from only two different people, and he kept a written record of each check. As part of his effort to conceal his true income, Judge Claiborne stopped his long-time practice of depositing checks for legal fees in the bank.

In 1979, he cashed 8 out of 14 checks at Las Vegas casinos, thereby leaving no record of the receipt of these income items in his bank statements. The total dollar amount of the checks he cashed at casinos is substantially similar to the amount by which his fee income was underreported

We can all anticipate that Judge Claiborne will offer an explanation. He will contend that he advised Wright of his true $41,072.93 fee income and that the incorrect return was Wright's fault. But Judge Claiborne's explanation will not ring true. It cannot be reconciled with the documentary evidence. More importantly, Joseph Wright, an honest and straightforward person, will testify that he was never told, either orally or in writing, of Judge Claiborne's true fee income.

The jury sitting in *United States* v. *Claiborne* unanimously found beyond a reasonable doubt that Judge Claiborne willfully and knowingly made a false statement on his 1979 Federal income tax return after hearing this same evidence.

After underreporting his income in 1979, Judge Claiborne did it again in 1980. In 1980, he intentionally failed to report any of the $87,911.83 in fee income he had received. The evidence will show once again that this, too, was a willful act. In furtherance of Claiborne's plan to omit all of his fee income for 1980, he switched tax preparers. So without telling his friend and trusted accountant, Mr. Wright, he hired Jerry Watson of Creative Tax Planning to prepare his 1980 tax return. Mr. Watson was not an accountant. Still, Judge Claiborne engaged him and paid him more than three times as much as he paid Mr. Wright. And one can only wonder why.

The House will present an expert tax witness, William L. Wilson, who will testify that legal fee income must be reported on schedule C accompanying the 1040 Federal income tax form. Schedule C is used to report ordinary income from a business or profession. As long as Judge Claiborne's long-time accountant and friend, Joseph Wright, prepared his returns, the judge's legal fee income was properly listed as ordinary income on schedule C. But in 1980, none of his $87,911.83 in fee income was reported on schedule C. No schedule C was even filed with his return. More importantly, Judge Claiborne did not list his $87,911 in fee income anywhere else on his 1980 tax return.

The evidence will show that there were numerous other errors and irregularities on this sloppily prepared return. Mr. Wilson, the House expert witness, will take you through the 1980 return, pointing out the errors in the return, testify as to the proper preparation of the return, the true income and the proper tax liability.

Now, the worthy evidence in this case will show that Judge Claiborne knew full well what his income was. The evidence will show that in April 1981 he estimated that his 1980 tax liability would be $42,847.96, but when he filed his tax return just 2 months later, he signed the return which declared a tax liability of only $1,103.

Judge Claiborne admits that his 1980 fee income was $87,911.33. To be sure, he and Jerry Watson will proffer some irrational explanation such as to suggest that this income was somehow included as a capital item on schedule D. But the jury did not believe Judge Claiborne's protestations of ignorance and negligent error concerning his 1980 tax return and neither should you. The jury unanimously found that Judge Claiborne willfully and knowingly made a false statement on his 1980 tax return.

You should, and I say this respectfully, keep in mind at all times during this trial the kind of man with whom we are dealing. This is not an uneducated man. You heard him referred to as a scholar. He is not a man incapable of understanding his obligation to report income and pay taxes. He is a highly educated attorney and a learned judge who has participated in criminal tax cases, both as a lawyer and as a judge. He knew full well his obligation to pay his taxes, understood the meaning of signing his tax form under penalty of perjury, and was well aware of the seriousness and the penalties for tax evasion.

When you listen to Judge Claiborne's defense, realize what he is saying. The evidence will show that he alone knew the correct amount of his legal fee income in 1979 and 1980, but for both years, he blames two different tax preparers for the underreporting of his income, absolving himself thereby of all responsibility. But as the trial jury obviously found, it is simply impossible to believe that a Federal judge would be so ignorant of the facts and of his responsibilities.

It is unfortunate, indeed, that a Federal judge has violated a law as Judge Claiborne has, and it is even more unfortunate that a jury has effectively found this Federal judge lied, lied to the jury while under oath. The acts and crimes committed by Judge Claiborne constitute high crimes and misdemeanors. In the eyes of our legal system, he is a criminal, a convicted felon.

Under the circumstances, members of this special committee we submit that the evidence will establish that he cannot be permitted to remain as a judge of the U.S. distict court. To allow him to do so would seriously undermine the integrity of our court system and the confidence of the public in our system of justice.

Judge Claiborne should be found guilty on each and every Article of Impeachment.

The CHAIRMAN. Mr. Goodman.

Mr. GOODMAN. Mr. Chairman, honorable members of the committee, the evidence will show that Harry Claiborne was a citizen of the United States who dedicated his life to the legal profession because he believed that it stood for all that is right in this particular country. The evidence will show that he came to Nevada serving in the military and fell in love with Nevada. He became a police officer, became a deputy district attorney, became a preeminent trial lawyer specializing in high profile cases, representing both the rich and the very poor. The evidence will show that much of his work was done pro bono, without compensation, because he believed in the principles which he was defending. He handled unpopular cases; he handled unpopular clients. And as a result of that, along the way he had many detractors, persons who would criticize him, and he made enemies.

The evidence will show, as perhaps those in the legal profession can understand it, that he attained the very pinnacle that the profession provides, and that is a lifetime appointment as an article III Federal judge, subject to lifetime tenure as long as he acted with good behavior.

Judge Claiborne's life changed. Much has been made and much will be made as to the meticulous manner in which his bookkeeping was done while he was a private practitioner where he had set up a series of checks and balances in his own office to make sure that his income was properly being reported to his tax preparer, where checks and bank statements were actually sent from the bank directly to the tax preparer because he was running a law office with employees in that office, with associates in the office. In effect, it was a legal business.

When he went on the bench, he did not have a business to run. He had the judicial function to perform, and he performed it well. The evidence will show that he was scholarly and he spent all of his time preparing a good legal product to make sure that justice was evenly dispensed in Nevada and elsewhere, because he was called upon on many occasions to travel in the ninth circuit court of appeals region, called upon by the judges to fill in when calendars became too heavy because he had his calendar under control and they knew that if Harry Claiborne went there, the job would be done.

He had an accountant, and the accountant has a long term, longstanding relationship with Harry Claiborne, but the relationship was based on the fact that Judge Claiborne had a law business which needed to have a monitoring as far as the tax returns were concerned. And a leopard does not change its spots. Throughout the entire relationship between Judge Claiborne and Joseph Wright, or Jay Wright, as he will be referred to, Judge Claiborne always, without any deviation, directed Wright to give the IRS the benefit of any doubt to treat all unidentified items as income. The reason for this was that Judge Claiborne knew, because he was outspoken, that he did not want to have any trouble with the IRS.

When he went on the bench, he continued that directive to Jay Wright because he was sensitive to the type of pressure that was being brought upon him as being a member of the judiciary in the district of Nevada. And as I have indicated before, because it is so important in order to fathom the state of mind, what caused him to do what he did, whether or not he acted with that bad purpose that the word "willfully" connotes, Judge Claiborne knew that the Department of Justice strike force attorneys were feuding with Nevada judges, and he became involved in that very feud after his appointment September 1, 1978.

Judge Claiborne, in the midst of this atmosphere, continued to function as a highly respected judge. Fair, as the evidence will show through the character witnesses, but tough. People got a fair trial in front of him. If they were convicted, espesially of drug-related offenses, he was a stern and strict sentencer. And at the same time, while he was dispensing his judicial responsibilities, he also was taking care of his personal affairs.

These dates are important. On September 7 of 1980, Judge Claiborne wrote to Jay Wright, saying that he had made application to assume a mortgage and that the lender wanted a letter from Wright as to the amount of his earnings from his prior law practice for the years 1978, 1979 and 1980 to the date of the letter. This is critical since Judge Claiborne's judicial prosecution was predicated on the basis that the judge's 1979 tax return, prepared by Joseph Wright, reported $22,332.87 in such fees when in fact the fees totaled $41,072.93

In his letter to Wright, and there is no disagreement about that letter, on March the 7th of 1980, the judge listed a series of bank deposits showing the date and amount of each deposit totaling $45,371.93. Wright then wrote to the lender, Stanwell Mortgage Co., on March the 7th of 1980, that the Judge's earnings from private practice of law for the year 1979 were $45,371.93, the exact total of the bank deposits listed in the judge's letter.

Then on April 4, shortly after Wright had this information within his possession, the unprecedented search which I have referenced before of the strike force office took place. This search was authorized by another judge, senior judge Roger Foley, and among the items taken, as I have indicated on prior occasions, were depictions of Judge Claiborne as Ayatollah Claiborne, of Judge Foley as a clown, and various members of the Las Vegas community with implications that they were less than legitimate citizens.

One week after the search took place, and in the meantime, we remember that the judge found out that he was the subject of a grand jury investigation, we remember that the judge lashed out at the strike force and warned them that they would not run roughshod over the rights of the Nevada citizenry and that statement was widely published. One week thereafter, based on a request of Joseph Wright, on April 11, 1980—and this, perhaps, is the most important piece of evidence in the entire case because it is upon this that the credibility of Jay Wright hinges—the judge wrote to Wright, enclosing a check for $8,000. You will see the check; it will be dated April 11, 1980, payable to the Internal Revenue Service, together with his W-2. You will see the W-2 in evidence. And Wright was advised that he would have to send this in with an application for an extension of time to file a 1979 return.

And in fact, you will see that an extension was filed on that very day of April 11, 1980, and the extension was not signed by Harry Claiborne. The extension was signed by Joseph Wright. The check was dated and signed by Harry Claiborne, but the extension was filed by Wright who will testify that he did not receive this letter.

Now, in the letter, Judge Claiborne stated, and I will quote, "Fees received during 1979 for practice before I became a judge are $41,073.93." And that figure is just one dollar more than the amount received by Judge Claiborne from the fees earned in private practice.

Now, that letter, the evidence will show, was delivered to Jay Wright, not by Harry Claiborne, but by Judge Claiborne's secretary, Judy Ahlstrom.

Now, Judy Ahlstrom will be nervous when she testifies in front of you because this is an awesome experience. But even in spite of her nervousness, you will be able to judge that, in fact, she is telling the truth. She is going to testify that she has a background of long-time public service. She worked for the esteemed Senator Cannon. She has worked for the county of Clark, where Las Vegas is situated. She had a Q clearance at the Nevada test site, which was a clearance based on her personal integrity. And as she has testified, she would not lie even for her mother.

And Judy Ahlstrom is going to state under oath to this esteemed committee that on April 11, 1980, she copied the letter that I refer to on the office xerox machine. She copied the W-2. She received the $8,000 check from Judge Claiborne.

She delivered the letter, W-2, and the check to Wright's office on the day that the letter was written, April 11, 1980—the day the check was written, April 11, 1980—and the letter had the necessary information.

And later that day the evidence will show that Harry Claiborne personally delivered a $2,500 check to Wright's office to accompany an estimated tax form Wright said was needed to be sent to the IRS. And while in the office, Harry Claiborne saw the April 11, 1980 letter on Wright's desk. Now, the difficulty that we get in the case is Jay Wright was a public accountant. He had done it for his whole life, virtually. And he engaged in practices that, perhaps upon reflection, were not the wisest practices for an accountant to engage in.

He will testify, I believe, that he had a practice because of his relationship with his various clients that he never went over the information on the returns with them, that he just prepared the returns and sometimes even had his clients sign the returns in blank.

And that was the situation in this particular instance because of the fact that Judge Claiborne was assigned to handle cases in Los Angeles at or about the time that the tax returns were due, and the return was signed in blank—negligence, perhaps, gross negligence, perhaps; maybe he should not have done it but certainly not the type of conduct which would suggest the removal of a position which he has fulfilled with dignity and with honor.

In addition—and this is very important—one of the two persons from whom Judge Claiborne received the moneys earned in private practice for the year 1979—and these were moneys, so you will understand, which the judge had done the work for years passed, and the moneys had just been received by his former associates Jim Brown and Annette Quintana.

Interestingly, Annette Quintana utilized the same public accounting office, the office of Jay Wright. And Annette Quintana had her tax return for the year 1979 prepared by a Wright employee by the name of Ken Swanson.

And Ken Swanson and Annette Quintana had a discussion where Annette Quintana told Ken Swanson that she was sending Judge Claiborne checks in thousand dollar increments, based on moneys earned as a result of the representation of one of Judge Claiborne's clients. And the two of them discussed that there would, in fact, be a parallel cross-checking of the Quintana return against the Claiborne return to make sure that all of this income was picked up. And this is the very income upon which the House is basing its prosecution from not being disclosed to the tax preparer.

Now as I indicated before and will indicate it again, we are talking in terms of willfulness and bad purpose. We are talking in terms of an evil intent in order for the House to sustain its prosecution on counts I, III, and IV.

And based on this kind of disclosure, either taxpayer to his preparer upon whom he had the right to reply, I submit that you cannot find the type of willfulness necessary for conviction.

In 1981, the year that the 1980 return was to be prepared, Las Vegas was buzzing with the type of information which would chill any citizen and especially a Federal judge who had to be vocal about the rights of the citizenry. Judge Claiborne's conflicts with the executive branch of Government continued.

These are serious allegations that we make. They are not made lightly. Nobody likes to accuse a high-ranking Government official of grave misconduct, of acts of intimidation. But we are prepared to go forward with proof; we are prepared to sustain our burden that the special agent in charge of the Las Vegas FBI Office, Joseph Yablonsky, set out to get Harry Claiborne's head on a silver platter. That is the type of phraseology that is in a memorandum prepared by the FBI, to get Harry Claiborne's head on a silver platter.

And everybody who came in touch with Harry Claiborne, the evidence will show, became a victim of this governmental vindetta. There was a young private investigator, Eddie LaRue—and all of these folks are ready to come forward to testify—Eddie LaRue was accused of engaging in illegal wiretapping on behalf of Judge Claiborne while Judge Claiborne was a private practitioner.

And the prosecutors came to Eddie LaRue, the evidence will show, and said, "You are looking at 25 years here. And you will get 25 years. But you won't have to go to trial; we will dismiss the charges if you give us Harry Claiborne."

Eddie LaRue says, "I don't know anything about Harry Claiborne to give him to you." And he went to trial. And the trial was handled by a specially designated judge from outside the district of Nevada.

The trial was prosecuted not by Nevada prosecutors, by the public integrity section from Washington, DC, having nothing to do with Eddie LaRue, outside of their jurisdiction, but able to try him because they wanted to get Harry Claiborne. And fortunately for Eddie LaRue, he went to trial in Reno, NV and was acquitted by a jury.

Another person who was tainted as a result of his relationship with Harry Claiborne was Chuck Lee, a Las Vegas Metropolitan Police Department detective who specialized in giving lie detector tests. And Harry Claiborne, when he heard that there was going to be an investigation concerning his participating in illegal bugging activity, went to the best man available in the community, a man recognized for his expertise in polygraphy, and said, "Give me a lie detector test." And he took a lie detector test and, of course, he passed the lie detector test, that he was guilty of no wrongdoing and as a result of that, Chuck Lee, who had this valued position on the police department was demoted and sent out to pasture. And he is just now, years later, making his way back. And he is prepared to testify.

And we do not want to minimize the Joe Conforte situation. Just because Conforte wasn't a factor during the trial, as far as testifying in the second trial, that is not the relevant criteria in ascertaining whether or not his testimony should be admitted. What is important is to show the thought process on the part of Harry Claiborne as to whether or not he is going to be engaging in willful fraudulent activity when he knows that everybody connected with him is being asked to point the finger to him.

And the unconscionability of the proposal to Joe Conforte was such that it shows the Federal executive's animus. He got an illegal reduction of sentence. I say without any equivocation. The time had already expired; he had already been denied a reduction of sentence. He was a fugitive, and his sentence was cut from 5 years to 15 months. And it was to run concurrent with his State sentence.

There were discussions with him in a resolution of a tax problem where the man owed some $21 million, and it was going to be resolved if he came back and testified against Harry Claiborne for $3,500,000—excused by $19 million to get the judge.

The habitual criminal charge was dismissed. Pending criminal cases were dismissed. The prosecutor was romancing him over in Rio de Janeiro and then finally brought him back, negotiating with a fugitive on behalf of the U.S. Government to bring him back to get a judge.

Judge Claiborne's mail was opened and only by some quirk of fate was he able to discover that on March 19, 1981, right about the time that he was going to be preparing the work product, the gift to his bookkeeper for purposes of filing a return, when he discovered that his American Express bills were found in the envelope of a dear close personal friend of his.

And reports were made, reporting this to American Express. And in order to justify that, Mr. Yablonsky began an independent investigation, suggesting that there was some type of bribery conduct between this good friend of Harry Claiborne's. And Harry Claiborne's, it so happens, good friend is Judge Tom O'Donnell, the gentleman who died the day we were arguing this case in the ninth circuit court of appeals. And Judge Claiborne didn't even attend the argument on one of the most important days of his life so he could be with his life-long friend at that time.

Stings were suggested. This is something that I hope we are not used to in ths country. After ABSCAM, I hope we don't accept this methodology where criminals are sought in order to make deals against respected citizens. Persons who are under criminal charge on five different occasions, which we are able to prove, were visited and we are told that if you give us Harry Claiborne, you don't have anything to worry about.

And we are not talking about insignificant persons. One person was a lawyer who was under charge. Another was a State senator who was under charge. And on each occasion not only wouldn't they participate in the sting and give money to Judge Claiborne or try to give money to Judge Claiborne to fix a case, but on no occasion were they able to come forward with any type of testimony whatsoever to suggest he engaged in any type of illegal activity.

And while this is going on, grand juries are meeting about Judge Claiborne in Las Vegas. In Portland, two grand juries in Reno—and yet the prosecutors, the managers, would have you expect that this bright judge is going to try to evade his taxes, going to try to avoid his obligation with a willful frame of mind.

And they make a great point of the fact that he switched his accountant. The evidence is going to show that there was reason that he switched his accountant of long standing because the accountant wasn't particularly doing the work the way Judge Claiborne wanted him to do it.

Judge Claiborne was married to a woman who used another accountant 'The woman had undergone an audit—we all know what an IRS audit is like—and the audit was conducted in a manner which resulted in a favorable determination while she was represented by Jerry Watson's office, and she wanted Judge Claiborne to meet this accountant of hers. And Judge Claiborne went in, and he discussed a real estate transaction with Watson because Watson had an expertise in real estate; he had overheard Watson on the phone discussing a real estate transaction, right off the bat developed a certain confidence in the man, and he recognized Watson from being a fellow parishoner at the Baptist church which the judge and Watson attended on a regular Sunday basis, and he decided to let Watson do his return.

Now I am still not sure what the House's proof is going to be, as far as the 1980 tax return was concerned. When the case was tried in the court system, I got the impression that the prosecutors were saying that Judge Claiborne did not make a full disclosure of the income earned from private practice to his tax preparer. Now I think we are being asked to shift in midstream, and that is the danger of adopting a finding at a trial level if proofs are different than those which are going to be presented to you independent in an impeachment proceeding.

I get the impression now that the House's position is yes, we don't argue with the fact that Judge Claiborne made a full disclosure. As a matter of fact, it was more money than he disclosed to his tax preparer than he actually earned—I think $600 more. And the reason that they changed their position is now another witness has come forward who was intimidated from coming forward and telling the truth when the case was being tried who now will testify—and her name is Charlotte Travaglia—that, in fact, Judge Claiborne made a full disclosure of the income earned in private practice and, if anything, Travaglia argued with Jerry Watson concerning the proper preparation of the return.

The return was ultimately signed by Judge Claiborne. And I want you to look at the return carefully because the return was not the type of return that you would have signed or that perhaps I would have signed at any particular time, if we had studied it. It is certainly not the type of return which is a badge of fraud because it is very kind of return that any IRS field level agent, upon looking at it, would say, "Wait a second. I want to see this tax preparer. There is something wrong here."

And you or myself would have gotten a letter and we would have been invited down to the Internal Revenue Service and we would have discussed the return and we would have said, "Boy, this is a funny-looking return. Schedule D, I'm not really sure what the schedule D is, but let me go back and talk to my accountant about it."

And if you didn't like what the taxman was telling you at the local level, you would then be able to go to a regional level and meet with the regional counsel. And after that, you would be able to go back to Washington. And after that you would be able to speak to the U.S. attorney. And you wouldn't be indicted.

But in this case, Judge Claiborne wasn't asked anything about the return. The return was rushed into a grand jury room, and he was indicted without even an opportunity to give any type of an explanation because the Executive was anxious to get Judge Claiborne.

The **Chairman**. Mr. Goodman, you have 3 minutes remaining.

Mr. **Goodman**. Thank you.

Judge Clayborne, the evidence will show, perhaps has a flaw. The flaw will be from the character witnesses who will testify; they will explain to you that he is a man who is committed to dispensing his, as a lawyer, his representation function without distraction; as a judge, his judicial functions without distraction; and he relied on those persons who were assisting him. He relied on these preparers.

You will be convinced, at the conclusion of all the evidence, that full disclosures were, in fact, made. And you will be convinced that the judge had a right to rely on the preparer at the time the returns were prepared: the one return which was signed in blank and the other return, which was signed hurriedly.

And you will also be convinced because Judge Claiborne is going to actively participate in these proceedings. You will also be convinced that he is a man who is deeply committed to what is right in this country. And I submit to you that the conclusion of all of the evidence—all of the evidence—you will come to a decision—the United States as a body of 100 jurors—will come to a decision that notwithstanding the wrong that has been done in the past to Judge Claiborne, which causes him to be in the predicament in which he finds himself, that that wrong can be righted, and a valued public servant, a good citizen, should be returned to active office.

Thank you.

The CHAIRMAN. We will now call the first witness to be produced on the part of the managers. But before we do, I would like to review rule 19 for the benefit of counsel both for the defendant and counsel on the part of the managers because rule 19 affects the treatment of testimony by witnesses.

It provides that if a Senator wishes a question to be put to a witness or a manager or to counsel of the person impeached or to offer a motion or order to accept a motion to adjourn, it should be reduced to writing and put by the presiding officers.

The parties or their counsel may interpose objections to witnesses answering questions propounded at the request of any Senator and the merits of any such objection may be argued by the parties or their counsel. Rulings on any such objections may be made as provided in rule 7. It shall not be in order for any Senator to engage in colloquy.

The Chair will deal as flexibly as possible with that rule. But that is the rule, as I have stated.

[Material submitted for the record follows:

United States Senate
WASHINGTON, DC 20510

PRETRIAL MOTIONS RECEIVED BY COMMITTEE

September 11, 1986

VI. MEMORANDUM FOR THE RECORD

On Thursday, September 11, 1986, at 1:50 p.m., The Managers on the part of the House of Representatives on the articles of impeachment against Judge Harry E. Claiborne delivered to the Committee on Impeachment of the United States Senate further Pre-trial documents consisting of the following items:

- "Notice of Filing";
- " Motion In Limine to Exclude Irrelevant Evidence Proffered by Judge Harry E. Claiborne;
- "Memorandum In Support..." of the above motion;

Copies of this filing are being distributed to the Senate Impeachment Committee Members and their respective Staff Representatives on Thursday, September 11, 1986.

Signed:
Anthony L. Harvey

Anthony L. Harvey
Clerk
Committee on Impeachment

VI. A

IN THE SENATE OF THE UNITED STATES

SITTING AS A COURT OF IMPEACHMENT

)
)
)
Impeachment of Judge)
Harry E. Claiborne)

NOTICE OF FILING

TO: Mr. Anthony Harvey
Clerk of the Committee on Rules and Administration
United States Senate (SR-318)

PLEASE TAKE NOTICE that on this 11th day of September, 1986, the United States House of Representatives has filed with the Clerk of the Committee on Rules and Administration of the United States Senate, an original and thirty copies of the following:

(a) Memorandum In Support Of Motion In Limine To Exclude Irrelevant Evidence Proffered By Judge Claiborne; and

(b) Motion In Limine To Exclude Irrelevant Evidence Proffered by Judge Harry E. Claiborne

Simultaneous with the filing of the above described documents, the same were served on opposing counsel, Oscar B. Goodman, Esquire, by federal express delivery, and on The Honorable Howard W. Cannon by messenger.

THE UNITED STATES
HOUSE OF REPRESENTATIVES

By Nicholas D. Chabraja
Nicholas D. Chabraja
Special Counsel

Managers of the House of Representatives

Peter W. Rodino, Jr.
Robert W. Kastenmeier
Romano L. Mazzoli
William J. Hughes
Dan Glickman
Hamilton Fish, Jr.
Henry J. Hyde
Thomas N. Kindness
Michael DeWine

Impeachment Trial Staff

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House Judiciary Committee Staff Participating in Impeachment Trial Preparation

M. Elaine Mielke, General Counsel
Alan F. Coffey, Jr., Associate Counsel
Judith Bailey, Counsel
Daniel M. Freeman, Counsel
Gary G. Goldberger, Counsel
Warren S. Grimes, Counsel
Joseph V. Wolfe, Counsel
Jonathan R. Yarowsky, Counsel

VI. B

IN THE SENATE OF THE UNITED STATES

Sitting As A Court Of Impeachment

In re IMPEACHMENT OF JUDGE HARRY E. CLAIBORNE	)))))))

MOTION IN LIMINE TO EXCLUDE IRRELEVANT EVIDENCE PROFFERED BY JUDGE HARRY E. CLAIBORNE

The House of Representatives, through its managers and counsel, respectfully moves the Senate, sitting as a Court of Impeachment, to exclude the following evidence that has been proffered by Judge Claiborne in his Pretrial Statement:

1. All evidence offered in an attempt to show that the Judicial Branch of government participated in a conspiracy to remove Judge Claiborne from the bench, by engaging in a "sinister form of court--packing" or other judicial misconduct.

The exclusion of this evidence would eliminate the need for the following witnesses identified by Judge Claiborne (with proffered testimony identified in parentheses):

a. Chief Justice Warren E. Burger (alleged improper selection of judges, bias against State of Nevada and participation in conspiracy);

b. Judge Wilbur F. Pell (improper designation to hear appeal and other alleged irregularities);

c. Judge J. Edward Lumbard (improper designation to hear appeal and other alleged irregularities);

d. Judge Robert H. McWilliams (improper designation to hear appeal and other alleged irregularities);

e. Judge Walter E. Hoffman (improper designation to conduct trial and alleged prejudice against Judge Claiborne); and

f. Judge Bernard Decker (alleged general bias or animus of Judicial Branch against Judge Claiborne).

2. All evidence offered in an attempt to show the motivations of the persons who investigated and prosecuted Judge Claiborne in the prior criminal proceedings, including any evidence suggesting that, but for an improper "targeting" by the Executive Branch, Judge Claiborne "would not have been caught" on the tax charges.

The exclusion of this evidence would eliminate the need for the following witnesses identified by Judge Claiborne (with proffered testimony identified in parentheses):

a. Mr. William Webster (actions allegedly taken to avoid jeopardizing the investigation of Judge Claiborne);

b. Mr. William French Smith (actions allegedly taken to avoid jeopardizing the investigation of Judge Claiborne);

c. Mr. Joseph Yablonsky (alleged vendetta against Judge Claiborne);

d. Mr. Andy Gramby Hanley (alleged vendetta against Judge Claiborne);

e. Mr. Eddie LaRue (alleged vendetta against Judge Claiborne);

f. Mr. Chuck Lee (alleged vendetta against Judge Claiborne);

g. Mr. Walter Rozanski (alleged vendetta against Judge Claiborne);

h. Mr. Richard Wright (alleged vendetta against Judge Claiborne);

i. Mr. Paul Ashe (alleged vendetta against Judge Claiborne);

j. Mr. Ron Veatch (alleged vendetta against Judge Claiborne);

k. Mr. Bruce Lyons (alleged vendetta against Judge Claiborne);

l. Mr. John McCarthy (alleged vendetta against Judge Claiborne);

m. Mr. B. Mahlon Brown (alleged vendetta against Judge Claiborne);

n. Mr. Geoffrey Anderson (alleged vendetta against Judge Claiborne);

o. Mr. Herb Hawkins, (alleged vendetta against Judge Claiborne);

p. Mr. Andrew Reich (alleged vendetta against Judge Claiborne);

q. Mr. Michael E. Shaheen, Jr. (actions allegedly taken to avoid jeopardizing investigation of Judge Claiborne);

r. Mr. Clyde Maxwell (special treatment allegedly given to Judge Claiborne's case by the IRS);

s. Mr. Lawrence Semenza (actions allegedly taken by prosecution in course of investigation);

t. Mr. Richard Jessinger (role in the investigation of Judge Claiborne);

u. Mr. Donald Skelton (role in the investigation of Judge Claiborne); and

v. Mr. Leo Halper (role in the investigation of Judge Claiborne).

3. All evidence offered in an attempt to show the manner in which the testimony of Joseph Conforte was obtained, and the truthfulness of that testimony.

The exclusion of this evidence would eliminate the need for the following witnesses identified by Judge Claiborne (with proffered testimony summarized in parentheses);

a. Mr. Joseph Conforte (procurement and truthfulness of Conforte testimony);

b. Norico Lowe/Nouko Low (actions allegedly taken to secure Conforte testimony);

c. Mr. Gerald Swanson (actions allegedly taken to secure Conforte testimony);

d. Judge John L. Smith, Jr. (actions allegedly taken to secure Conforte testimony);

e. Mr. Peter Perry (negotiations purportedly leading to Conforte testimony); and

f. Mr. Mills Lane, III (actions allegedly taken to secure Conforte testimony).

4. All evidence offered in an attempt to show that government agents "burglarized" Judge Claiborne's home or conducted other "covert" surveillance, such as a "mail cover."

The exclusion of this evidence would eliminate the need for the following witnesses identified by Judge Claiborne (with proffered testimony identified in parentheses);

a. Mr. Lake Headley (investigated burglary);

b. Mr. Cliff Isbell (allegedly participated in burglary);

c. Mr. James Johnson (allegedly participated in burglary);

d. Mr. Dennis Caputo (allegedly participated in burglary); and

e. Mr. Steve Rybar (allegedly participated in burglary).

5. All evidence offered in an attempt to show Judge Claiborne's general character and reputation.

The exclusion of this evidence would eliminate the need for the following witnesses identified by Judge Claiborne (with proffered testimony identified in parentheses);

a. Mr. H. M. Greenspun (character witness)

b. Judge E. M. Gunderson (character witness)

c. Mr. Kenneth C. Cory (character witness)

d. Mr. Stephen Stein (character witness)

e. Mr. Barry L. Lieberman (character witness)

f. Mr. Ed Kane (character witness)

g. Ms. Ruth Cohen (character witness)

h. Mr. Lamond Mills (character witness)

i. Ms. Lorraine Luke/Murphy (character witness)

j. Mr. Brad Jerbic (character witness)

k. Mr. Ed Horn (character witness)

l. Mr. Mike O'Callahan (character witness)

m. Mr. Peter Echeverria (character witness)

n. Mr. David Chesnoff (character witness)

o. Mr. Robert Dickerson (character witness)

p. Mr. Donald Campbell (character witness)

q. Mr. Gene Sadoian (character witness)

r. Ms. Helen Holley/Holly (character witness)

s. Mr. Leland Lutfy (character witness)

t. Mr. Daniel Markoff (character witness)

The reasons in support of this motion are set forth in the Memorandum in Support of Motion In Limine to Exclude Irrelevant Evidence Proffered by Judge Claiborne, filed herewith.

Respectfully submitted,

THE UNITED STATES
HOUSE OF REPRESENTATIVES

by Nicholas D. Chabraja
Nicholas D. Chabraja
Special Counsel

Managers of the House of Representatives

Peter W. Rodino, Jr.	Hamilton Fish, Jr.
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Gary G. Goldberger, Counsel
Warren S. Grimes, Counsel
Joseph V. Wolfe, Counsel
Jonathan R. Yarowsky, Counsel

VI. C

IN THE SENATE OF THE UNITED STATES

Sitting As A Court Of Impeachment

In re)
)
)
)
)
IMPEACHMENT OF JUDGE)
HARRY E. CLAIBORNE)

MEMORANDUM IN SUPPORT OF MOTION *IN LIMINE* TO EXCLUDE IRRELEVANT EVIDENCE PROFFERED BY JUDGE CLAIBORNE

The House of Representatives, through its managers and counsel, respectfully offers this memorandum in support of a motion *in limine*, filed herewith, to exclude irrelevant evidence proffered by Judge Claiborne.

The Senate Rules governing impeachment proceedings empower the Senate to exclude irrelevant evidence. Impeachment Rule VII provides that "the Presiding Officer on the trial may rule on all questions of evidence including, but not limited to, questions of relevancy, materiality, and redundancy of evidence." When the Senate is proceeding by Committee under Impeachment Rule XI, the Committee and its Chairman "shall (unless otherwise ordered by the Senate) exercise all the powers and functions conferred upon the Senate and the Presiding Officer of the Senate, respectfully, under the rules of procedure and practice in the Senate when sitting on impeachment trials." Impeachment Rule XI.

The Senate Rules are consistent with rules governing the introduction of evidence in federal courts. Rule 402 of the Federal Rules of Evidence provides: "Evidence which is not relevant is not admissible." Rule 401 defines this concept:

> "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

The House of Representatives respectfully submits that much of the evidence proffered in Judge Claiborne's Pretrial Statement does not make the existence of facts that are of consequence to the Articles of Impeachment more or less probable. The ultimate issue presented by each of the four Articles of Impeachment is whether Judge Claiborne has engaged in conduct that has violated the public trust. Much of the evidence proffered by Judge Claiborne concerns matters such as whether he should have been caught for his crimes, whether the motivations of the parties who investigated and prosecuted his case were pure, whether a "grand conspiracy" ranging from the Chief Justice of the United States to the Director of the FBI existed against him, whether government agents improperly secured the incriminating evidence that established his guilt, and whether Judge Claiborne enjoyed a favorable reputation as a man and a judge. The House of Representatives submits that none of these matters make any of the issues alleged in the Articles of

Impeachment more or less probable. As a result, the Senate should exercise the authority set forth in its own rules to exclude this evidence.

Specifically, the House of Representatives submits that the following testimony is irrelevant, for the following reasons:

1. Evidence offered in an attempt to show that the Judicial Branch of government participated in a conspiracy to remove Judge Claiborne from the bench, by engaging in a "sinister form of court-packing" or other judicial misconduct.

Judge Claiborne contends that a broad conspiracy existed against him, which extended to the Judicial Branch of government. He argues:

> Here, we are confronted with a particularly sinister form of "court packing" in which a particular ideological and political clique in the Executive and Judicial Branches have joined forces to remove a judge, probably not intended to be the only one with whom they disagree.[1]

Judge Claiborne also contends that judges were "intimidated by that which they saw happening to Judge Claiborne,"[2] and failed even to read his briefs or consider his arguments on appeal.[3]

In tendering these broad accusations, Judge Claiborne makes no specific allegations of misconduct or offers of proof to support his claims. He does not identify any hint of evidence of a conspiracy. He offers no specific proof that judges in fact were "cowed" by the Executive Branch. He gives no explanation as to how he knows what other judges did or did not read. The allegations do not include the slightest concrete evidence of personal bias on the part of any member of the judiciary against Judge Claiborne.

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[1] Motion for "Full and Fair" Impeachment Trial, at 19.

[2] *Id.*, at 2.

[3] Answer to Articles of Impeachment, at 3.

At the outset, the House of Representatives submits that, in the absence of specific allegations and offers of proof, the Senate need not even consider the relevancy of these claims. Allegations of this nature must be pleaded with specificity. A presumption of regularity must attend the considered actions of a co-equal branch of government. The Senate is conducting an impeachment trial concerning the conduct of Judge Harry E. Claiborne. It need not provide a forum in which Judge Claiborne may search for evidence to substantiate wild and paranoid theories of government oppression.

In any event, these claims are irrelevant. The Articles of Impeachment are based on allegations concerning the conduct of Judge Claiborne and the verdict of twelve citizens who heard the evidence and found him guilty. Judge Claiborne has made no showing that "the grand conspiracy of the judiciary" either influenced his actions or affected the jury's verdict. There is no reason to hear testimony from the many judges identified by Judge Claiborne.

2. Evidence offered in an attempt to show the motivations of the persons who investigated and prosecuted Judge Claiborne in the prior criminal proceedings, including any evidence suggesting that, but for an improper "targeting" by the Executive Branch, Judge Claiborne "would not have been caught" on the tax charges.

Perhaps the most pervasive theme in all of Judge Claiborne's pleadings is that he was "targeted" by the Executive Branch because he was an ardent defender of civil liberties and an outspoken critic of the FBI organized crime "task force" in Las Vegas. An entire section of his Pretrial Statement is captioned "The Motive," in which Judge Claiborne claims that FBI agent Joseph Yablonsky waged a personal campaign to "get" Judge Claiborne. As perhaps best summarized in his motion for a "full" trial, at 2:

> That but for the Respondent Harry E. Claiborne's reputation as an ardent defender of civil liberties, both before and after his ascension to the bench, which caused discomfiture to members of the Executive Branch of government (most notably the Special Organized Crime Task Force and Las Vegas FBI Special Agent in Charge Joseph Yablonsky) his prosecution would never have occurred.

Judge Claiborne thus advances a claim of "selective prosecution."

The House of Representatives submits that the motives of the parties who investigated and prosecuted Judge Claiborne are irrelevant to this impeachment proceeding. If Judge Claiborne in fact committed tax fraud -- an issue that this claim of error of Judge Claiborne does not address -- the animus of the parties who uncovered and presented the evidence does not undermine the fact that Judge Claiborne has violated the public trust. In essence, this claim is one that "I should not have been caught." Certainly, such a contention has no place in an impeachment inquiry.

The same conclusion follows with respect to Judge Claiborne's claim of "selective prosecution." The fact that another citizen may or may not have been prosecuted does not make Judge Claiborne any less guilty. Prosecutors legitimately have broad discretion in determining when to institute a federal prosecution; courts will not overrule an exercise of that discretion unless it discriminates against a suspect class. Oyler v. Boles, 368 U.S. 448 (1962). Moreover, the prosecution does not render the verdict in a criminal case; in a contested proceeding, only a jury may convict. It is the conduct of Judge Claiborne and the integrity of the jury verdict, not the motivations of the litigants, that must be the focus of this Senate inquiry. There is no reason for the Senate to consider the countless witnesses identified by Judge Claiborne who allegedly will testify concerning the animus of Joseph Yablonsky and others against Judge Claiborne.

3. Evidence offered in an attempt to show the manner in which the testimony of Joseph Conforte was obtained, and the truthfulness of that testimony.

Seven pages of Judge Claiborne's Pretrial Statement (pages 15-21) allege government misconduct in the use of Joseph Conforte as a witness against Judge Claiborne. This evidence is irrelevant because Joseph Conforte was not a witness at the second trial. He has nothing to offer with respect to the filing of Judge Claiborne's 1979 and 1980 tax returns.

Judge Claiborne also argues, as if it were relevant, that the jury in the first trial did not reach a verdict on any count and that the government then moved to dismiss the Conforte allegations.[4] It is equally noteworthy that the jury in the first trial failed to acquit Judge Claiborne on any charges, despite the presumption of innocence in his favor. The House of Representatives submits that what is relevant is that, at the second trial, which had nothing to do with the Conforte allegations, a jury unanimously found Judge Claiborne guilty of two tax fraud charges.

Perhaps recognizing the irrelevance of the allegations concerning Mr. Conforte to the tax fraud charges, Judge Claiborne contends that Mr. Conforte infected the grand jury that indicted Judge Claiborne on the tax charges. As alleged in his Pretrial Statement, at 20:

> The Conforte allegations so inflamed the grand jury into believing that Claiborne was a corrupt judge, that they voted to indict on the tax charges as well.

This contention is disingenuous. If a jury at trial, not influenced by the Conforte allegations, found Judge Claiborne guilty beyond a reasonable doubt, there is no reason to believe that a grand jury would not have found that sufficient evidence existed to warrant an indictment. Judge Claiborne's claim with respect to the Conforte allegations is again, in essence, "I should not have been caught on the tax charges." The Conforte claims are irrelevant and should be ignored by the Senate.

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[4] See Motion for Full and Fair Impeachment Trial, at 3.

4. Evidence tending to show that government agents "burglarized" Judge Claiborne's home or conducted other "covert" surveillance, such as a "mail cover."

Judge Claiborne contends that his "most shocking allegation"[5] is that government agents did a "black bag" job on his home in search of evidence. Similarly, he claims to have been the victim of a "mail cover." Although Judge Claiborne does not identify any evidence introduced by the government at trial that was secured through an unlawful search and seizure, he contends that these actions "shock the conscience" and compel dismissal of the proceedings.

The Department of Justice has filed an extensive pleading rebutting Judge Claiborne's factual allegations.[6] There is no reason, however, for the Senate to consider these claims. These allegations of Judge Claiborne are completely removed from either his conduct or the jury's assessment of guilt or innocence. They concern, at best, police misconduct in the *manner* in which evidence was secured; they involve claims that, if proved, could warrant an application of the "exclusionary rule" in a judicial proceeding.

The House of Representatives submits that the exclusionary rule has no place in an impeachment proceeding. The rule was created by the judiciary and is designed primarily to deter police misconduct. It is not "a personal constitutional right of the party aggrieved." *United States* v. *Calandra*, 414

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[5] Pretrial Statement at 23.

[6] *See* "Government's Opposition to Defendant's Motion to Vacate Judgment and Sentence" (filed May 15, 1986).

U.S. 338, 348 (1974). Even in judicial proceedings, its application has been limited.[7] The prospect of a dismissal of a criminal case is sufficient to deter police misconduct; little would be added by applying this admittedly harsh sanction to impeachment proceedings. It is almost inconceivable that a public official, guilty of criminal misconduct while in office, could avoid impeachment solely because misconduct had occurred in the way that evidence initially was obtained. There is no reason for the Senate to spend any time on these allegations.

5. Evidence tending to show Judge Claiborne's general character and reputation.

Judge Claiborne has submitted a lengthy list of witnesses who will offer evidence as to his general reputation as a man and as a judge. The House of Representatives again submits that this evidence is irrelevant and should be excluded.

The House of Representatives does not contend that Judge Claiborne is an evil man without redeeming qualities. Indeed, the record of his life and career suggests that, for many years, Judge Claiborne did many things to commend himself. The Articles of Impeachment rest on allegations that Judge Claiborne chose to willfully defraud the government on his 1979 and 1980 income tax returns, that a jury heard the evidence of these crimes and found him guilty beyond a reasonable doubt, and that, as a result of these facts, Judge Claiborne has brought disrepute upon the federal judiciary and violated the public trust. Proof that Judge Claiborne has done many good things, and is respected by many persons, could not provide an excuse or justification for his criminal misconduct while in office.

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[7] The exclusionary rule does not apply in certain instances in which the police acted in good faith, United States v. Leon, 468 U.S. 897 (1984), the evidence was obtained from a source independent of the misconduct, United States v. Crews, 445 U.S. 463 (1980), or the evidence "inevitably" would have been obtained in a lawful manner. Nix v. Williams, 467 U.S. 431 (1984). The exclusionary rule does not apply in grand jury proceedings, United States v. Calandra, 414 U.S. 338 (1974), or civil proceedings. INS v. Lopez-Mendoza, 468 U.S. 1032 (1984); United States v. Janis, 428 U.S. 433 (1976).

If the Senate wishes to hear from these witnesses, the House of Representatives submits that character testimonials may be submitted best by letter. There is no reason for the Senate to incur the cost of bringing these 20 witnesses to Washington from Nevada, or to expend the attendant amount of time in trial, to hear the live testimony of these witnesses.

For all of these reasons, the House of Representatives respectfully requests that this motion be granted.

Respectfully submitted,

THE UNITED STATES
HOUSE OR REPRESENTATIVES
By Nicholas D. Chabraja
Nicholas D. Chabraja
Special Counsel

Managers of the House of Representatives

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United States Senate
WASHINGTON, DC 20510

15 September 1986

VII. MEMORANDUM FOR THE RECORD

On Monday, September 15, 1986, at 9:00 a.m., Oscar B. Goodman, on behalf of himself and the Honorable Howard W. Cannon, Counsels for the Impeached Person, Judge Harry E. Claiborne, delivered to the Committee on Impeachment of the United States Senate pre-trial documents consisting of the following items:

* "Notice of Filing;"

* "Reply and Memorandum of Points and Authorities in Opposition to House of Representatives' Motion *In Limine* To Exclude Irrelevant Evidence Proffered by Judge Harry E. Claiborne."

Copies of this filing were immediately distributed to the Senate Impeachment Committee Members and their respective staff representatives on this same day: September 15, 1986.

Signed:
Anthony L. Harvey

Anthony L. Harvey
Clerk
Committee on Impeachment

VII. A

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IN THE SENATE OF THE UNITED STATES
Sitting As A Court Of Impeachment

In re)
)
)
)
IMPEACHMENT OF JUDGE)
HARRY E. CLAIBORNE)

NOTICE OF FILING

TO: Mr. Anthony Harvey
Clerk of the Committee
on Rules and Administration
United States Senate (SR-318)

Please take notice that on this 15th day of September, 1986, the Honorable Harry E. Claiborne filed with Clerk of the Committee on Rules and Administration of the United States Senate, an original and thirty copies of the following.

(1) Reply and Memorandum of Points and Authorities in Opposition to House of Representatives' Motion In Limine To Exclude Irrelevant Evidence Proffered by Judge Harry E. Claiborne.

Simultaneous with the filing of the above described documents, the same were served on opposing counsel, Nicholas D. Chabraja, Special Counsel, by hand delivery.

The Honorable Harry E. Claiborne

By: Oscar B. Goodman

VII. B

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IN THE SENATE OF THE UNITED STATES
Sitting As A Court Of Impeachment

In re)
)
)
)
IMPEACHMENT OF JUDGE) Reply to
HARRY E. CLAIBORNE) House of Representatives
Motion In Limine to Exclude
Irrelevant Evidence Proffered
By Judge Claiborne

Comes now, The Honorable Harry E. Claiborne, by and through his undersigned counsel and makes this his Reply to House of Representatives Motion In Limine to Exclude Irrelevant Evidence Proffered by Judge Claiborne and in support thereof relies upon the attached Memorandum of Points and Authorities, incorporated by reference herein and the following:

1. That the doctrine of Separation of Powers mandates that this Honorable Senate hold an independent and autonomous trial with full rights to due process;

2. That the intent of the Founding Fathers was for the impeachment trial to protect the judiciary, as part of our system of checks and balances, from Executive efforts to impede the sanctity of an independent federal judiciary;

3. That a concentrated and calculated effort was made by the Executive to "silence" an Article Three Judge, to wit: Harry E. Claiborne by a tainted prosecution, where Judge Claiborne was precluded from presenting crucial evidence at the time of his judicial trial;

4. That it is respectfully submitted that the House of Representatives, in its zeal as prosecutor, fails to recognize that an inherent purpose of the impeachment trial is to prevent the tyrannical wielding of power by the Executive and that accusations of Executive overreaching must be addressed as a matter of Constitutional mandate;

5. That Judge Claiborne has throughout his ordeal, maintained his innocence and has testified under oath in his own defense. He has never exercised his constitutional right to remain silent;

6. That it is respectfully submitted that Judge Claiborne is not relying on a defense that "he should not have been caught;"

7. That in fact, the House of Representatives wholly misconstrues the Judge's intentions;

8. That not only should the Senate of the United States be concerned with the invidious conduct of the Executive in doggedly pursuing the Judge, but also recognize that the Judge was cognizant of the Executive's intent to intrude on his independence at the time he is accused by the Executive of having wilfully failed to pay taxes;

9. That most significantly, at the time of trial, Judge Hoffman refused to allow the Honorable Harry E. Claiborne to present evidence of government vendetta aimed specifically at removing him from the bench, which evidence the Judge was aware of at the very time he is accused of committing a crime;

10. That if said excluded evidence had been presented to a jury, due process would have been guaranteed as the jury would have been informed of Judge Claiborne's state of mind at the time of the alleged tax violations;

11. That, in essence, the jury would have been informed that a federal judge, with over thirty (30) years experience as a criminal defense attorney, who knew he was the "target" of a government investigation, would have never intentionally or otherwise violated any law of our land, including the tax laws;

12. That the House of Representatives, by way of their Motion _In Limine_, would deny to the Honorable Harry E. Claiborne, and implicitly our nation, rights of due process and confrontation which our Constitution sanctifies;

13. That a _full_ and _fair_ hearing requires an explanation of the conduct of the Executive and those judicial officers who failed to permit full disclosure to the jury of Judge Claiborne's position;

14. That the following examples provide clear examples of information available to Judge Claiborne at the time of his alleged wilful and intentional criminal conduct, and will most assuredly provide this Honorable Senate with evidence of Judge Claiborne's true state of mind at the time, and his true non-criminal, non-offensive _intent_:

a. At the time Judge Claiborne became a federal judge in 1978, the entire federal judiciary in Nevada was engaged in a battle with the Special Strike Force of the United States Justice Department;

b. Federal District Court Judge Thompson of Nevada described the Strike Force's Chief Attorney as "schizophrenic";

c. Federal District Court Judge Foley ordered the seizure by United States' Marshalls in April of 1980 of contemptuous caricatures, hanging in the Justice Department Strike Force Office, including one which mocked Judge Claiborne as "Ayatollah Claiborne";

d. Headlines and stories in Las Vegas, Nevada newspapers in April of 1980 chronicled the convening of a federal grand jury that was investigating the Honorable Harry E. Claiborne for engaging in illegal wiretapping (the leak of the story itself of secret grand jury proceedings was done to intimidate the federal judiciary);

e. On April 9, 1980, the newspapers in Las Vegas report remarks made by Judge Claiborne in response to the Strike Force efforts, wherein he warned the Executive not to trample on Nevada citizens' rights;

f. Significantly, on April 10, 1980, accountant J. Wright telephonically contacted Judge Claiborne for income tax information, contemporaneously with the foregoing;

g. Also contemporaneously therewith, Judge Claiborne's secretary, Judy Ahlstrom delivered a letter with full disclosures to accountant Wright with a check for eight thousand ($8,000.00) in United States currency and with the Judge's W-2 form;

h. In mid-April of 1980, FBI agent in charge, Yablonsky (who was later publicly censured by FBI Director Webster for other misconduct while in office), and Strike Force Attorney Geoffrey Anderson met to plan efforts against Judge Claiborne;

i. March 3, 1980, accountant Wright sends correspondence to three (3) financial agencies disclosing Judge Claiborne's income from private practice;

j. That in August of 1980, Eddie LaRue, a private investigator who was a friend of Judge Claiborne, and had done work for him was indicted for illegal wiretapping. He was offered immunity if he would provide any evidence of wrongdoing by Judge Claiborne. He knew of none, refused to cooperate, went to trial and was acquitted. LaRue will testify before this Honorable Senate;

k. Chuck Lee, a veteran Las Vegas Metropolitan Police Officer and expert polygrapher, who had polygraphed Judge Claiborne at the Judge's request in 1980 vis a vis the grand jury investigation of the Judge, said Judge Claiborne was truthful. Lee refused to lie and testify against the Judge and was demoted at the police department and subject to a personal Justice Department investigation. Chuck Lee will testify before this Honorable Senate.

l. The Federal Bureau of Investigation contacted a former client of Judge Claiborne's, Joseph Conforte, the owner of a house of prostitution, while the convicted felon, Conforte was a fugitive from justice residing in Brazil and offered to make an unconscienable deal with Conforte to deliver Judge Claiborne on a "silver platter." The following was given to Conforte (who, it is respectfully submitted, committed perjury at Judge Claiborne's first trial);

(i) illegal reduction of sentence;
(ii) excused from a tax liability of an amount in excess of $15 million dollars;
(iii) a pending criminal case was dismissed against him and although he could have been charged as an habitual criminal under Nevada law and received a life prison term, he was not;
(iv) a pending charge against a Conforte lawyer, negotiating on his behalf with the Executive, for sexual assault was dismissed.

[Judge Claiborne's jury of his peers, in determining his guilt or innocene were never allowed to consider whatsoever the lengths to which the Executive went to remove Judge Claiborne from his position, where he was maintaining constitutional authority, to the chagrin of the Executive. Judge Claiborne would note that the character witnesses which this Honorable Senate will hear pursuant to its earlier ruling, will include attorneys who will attest to the independence and judicial creativity manifested by Judge Claiborne, rulings which in some instances stopped Executive misconduct.]

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m. In 1981, the Executive, in a "fallback" to "Watergate" tactics, performed an illegal mailcover, illegally intercepting the American Express bills of the Judge and his long-time friend, the late Honorable Thomas O'Donnell, District Court Judge;

n. In 1981, it will be argued, an illegal search of Judge Claiborne's house was performed by the Federal Bureau of Investigation, a Las Vegas Metropolitan police officer, and two (2) private individuals. The Judge is prepared to present evidence of this invidious intrusion;

o. The Executive suggested to at least five (5) individuals that they assist the FBI in perpetrating a "sting" against the Judge. Testimony will be presented by witnesses for the Judge;

p. Nevada IRS Director Swanson, who possesses an unimpeachable character, refuses Yablonsky's demand to authorize a tax "deal" with felon Conforte. A "sting" is implemented against Swanson. He is demoted and transferred. He will testify for Judge Claiborne;

q. Between 1980 and 1983 four (4) federal grand juries are convened to investigate Judge Claiborne in Las Vegas, Nevada, Portland, Oregon, and Reno, Nevada;

r. In August of 1983, Judge Claiborne was indicted. He relinquished his judicial calendar. His first trial ended in a hung jury (11-1 for acquittal) and the prosecution thereafter moved to dismiss those most serious counts involving bribery and at his retrial he was convicted on 1979 and 1980 tax counts, but he was acquitted on the Judicial Ethics count.

s. On appeal he was denied, although said denial by a hand-picked panel of judges was attacked by dissenters on the United States Court of Appeals for the Ninth Circuit, even when it was determined that exculpatory evidence had been withheld from him by the Executive concerning chief prosecution witness, Wright. It was even acknowledged by Circuit Judge Ferguson that his brother appellate judges failed to properly examine the trial record.

15. That despite all of the foregoing gross abuse of our constitutional processes, the House of Representatives would, for reasons of expediency, and expediency only, deny to an Article Three Judge, a branch of our government, the very thorough trial contemplated by Alexander Hamilton when he wrote in the Federalist Papers, that "[b]y making the same persons judges in both cases, those who might happen to be the objects of prosecution would, in a great measure, be deprived of the double security intended them by a double trial;

16. That Judge Claiborne was fully aware that he was a "target" of the Executive at the time of his alleged illegal conduct and that it is submitted that in judging his impeachment culpability, this Honorable Senate should consider the misconduct described supra in determining whether a learned and experienced federal judge would have deliberately and intentionally violated federal law knowing full well he was the subject of intense executive investigation;

17. That a fortiorari evidence that the Judge wishes to present is relevant. It is relevant since it relates to legislative consideration of executive overreaching to intimidate and undermine the independence of the judiciary;

18. That the Honorable Harry E. Claiborne, with all his heart and soul maintains his innocence;

19. That this Honorable Senate must consider evidence of improper judicial handling of this case and that this occurrence is not stated in a vacuum by Judge Claiborne, but comes from the opinions of Circuit Judge Reinhardt dissenting in U.S. v. Claiborne, 781 F.2d 1327 (9th Cir. 1986) and Circuit Judge Ferguson, dissenting in U.S. v. Claiborne 781 F.2d 1325 (9th Cir. 1986) and the conduct of Mr. Chief Justice Burger in picking the panel to review Judge Claiborne's conviction as chronicled in the National Law Journal;

20. That Judge Claiborne was selectively prosecuted because of his expressions protected by the First Amendment, of ideas disapproved of by the Executive;

21. That this Honorable Senate has already approved of the testimony by ten (10) character witnesses for Judge Claiborne. That such evidence is permitted as logical and relevant, is acknowledged as hornbook law. See Moore's Federal Practice Sec. 404.12;

22. That the House of Representatives ignores the national interest in a full and fair trial as contemplated by our Founding Fathers, in seeking its Motion In Limine. The

Honorable Harry E. Claiborne, a bastion of *judicial* scholarship, integrity and independence, deserves the reasoned attention of this Honroable Senate of the United States, to consider *all* the facts of the entire scenario, that has led us to an impeachment trial, that historically has been described as "the groans of the people;"

23. That this impeachment trial personifies the beauty and righteousness of our constitutional republic. To usurp Senatorial authority to hear a full description of the conflict between an Article Three judge and the Executive would be to debilitate the essence of our nation.

Wherefore Premises Considered, the Honorable Harry E. Claiborne prays that this Honorable Senate deny the Motion *In Limine* filed by the House of Representatives in its entirety; and for other relief both at law and equity which the Senate deems just and fair.

Respectfully Submitted,

Oscar B. Goodman

David Z. Chesnoff, Esq. of Savarese and Chesnoff, Ltd. assisted in the preparation of this Motion and the attached Memorandum of Points and Authorities.

VII. C

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IN THE SENATE OF THE UNITED STATES
Sitting As A Court Of Impeachment

In re)
)
)
)
IMPEACHMENT OF JUDGE) Memorandum of Points
HARRY E. CLAIBORNE) and Authorities

This Honorable Senate shall try all impeachments and to do so it must hear a full presentation of evidence as proferred by the Honorable Harry E. Claiborne. Article One, Section Three of the Constitution.

The House of Representatives, it is respectfully submitted inartfully suggests that the Judge not be permitted to present witnesses on his behalf based on claims unsupported by evidence in the possession of the Judge. If the House of Representatives is so sure that the Judge does not possess evidence of Executive and judicial intrusion on his rights, then the Judge will not have any witnesses to present. However, it appears that the House of Representatives "protesth too much."

There is ample evidence of misconduct which the House attempts to prevent from being aired and which would directly impair the constitutional check of the impeachment process our founding fathers contemplated. The Federalist Papers.

This combination of the House of Representatives as prosecutor and the Executive inhibiting the presentation of evidence of interference with federal judicial independence is the very combination of judicial, legislative or executive powers which creates a system whose path would lead to inescapable tyranny and absolutism. Montesqui The Spirit of the Laws, 151-2 (Nugent Trans. 1949).

> Juries are frequently influenced by the opinions of judges. They are sometimes induced to find special verdicts, which refer the main question to the decision of the court. Who would be willing to stake his life and his estate upon the verdict of a jury acting under the auspices of judges who had predetermined his guilt. Hamilton, Federalist Papers.

Indeed, the Honorable Harry E. Claiborne has repeatedly been enjoined from a full presentation of evidence which would have shown his state of mind, that state of mind being guiltless. As the Framers stated:

> Apprehend that error in the first sentence be the parent of error in the second sentence.

Federal Rule of Evidence 803(3), for example, contemplates statements confirming the mental condition of a defendant as they are sufficiently trustworthy. Dangers of misperception, faulty memory, or insincerity may be less when the evidence relates to existing mental, emotional or physical state of the defendant. Moores, Federal Procedure Sec. 803(3).

The Honorable Harry E. Claiborne and all those who will testify about their perception and memory of events of the campaign against Judge Claiborne will all be available for cross-examination. It is most significant to note that the House does not fully deny the claims of Judge Claiborne, but rather would have them kept forever from the Senate. Clearly, the perceptions of Judge Claiborne of the events transpiring at the time he is alleged to have formed criminal intent to violate federal law must be publicly aired. To do otherwise would be to deny him due process.

It is axiomatic that state of mind evidence is admissable to show lack of criminal intent. United States v. Taglione, 546 F.2d 194 (5th Cir. 1977). A defendant was charged with making extortion demands for return of credit card invoices which he had found. The Defendant claimed that he had merely been negotiating for a reward. It was error to have excluded the testimony of the defendant's former attorney as to a conversation in which the defendant asked if it would be legal to negotiate for a reward.

The statement is admissable pursuant to Fed. R. Evid. 803(3). See also *United States v. Ottley*, 509 F.2d 667 (2d Cir. 1975) (regarding a union official charged with a violation of federal statute requiring records be maintained in sufficient detail to substantiate claims for reimbursed cash expenses. State of mind was an issue because the statute applies only if its provisions were violated "wilfully") - This principle applies to statements of third persons made to a principle. *Scholle v. Cuban-Venezuelan Oil Voting Trust*, 285 F.2d 318 (2d Cir. 1962), "The hearsay rule does not bar admission of statements used circumstantially, since, when so used, the primary focus of inquiry is whatever inferences can be drawn from the fact that the words were spoken and not the truths of what was said." 285 F.2d at 321.

The Honorable Harry E. Claiborne would respectfully submit his claims of the improper conduct of his case by both the Executive and the Judiciary were precisely detailed in the dissents filed by Circuit Judge Ferguson and Circuit Judge Reinhardt styled *United States v. Claiborne*, 781 F.2d 1325 and 1327 (9th Cir. 1986). These opinions are attached hereto and incorporated by reference herein.

Finally, in "Impeachment" Miscellaneous Documents, Committee on Rules and Administration, United States Senate (August 7, 1974), Memorandum IV On the Rules of Evidence for Senate Impeachment Trials it is clear that it was deemed advisable that all evidence not trivial or obviously irrelevant shall be received without objection. *Id*. at 243. It is respectfully submitted that evidence that tears at our constitutional heart and depicts intimidation of an independent judiciary cannot be characterized as trivial or irrelevant.

Furthermore, "the Senate is not just like a court in an impeachment trial; it is the Senate acting." *Ibid*. at 245.

This Honorable Senate, in fulfilling its constitutional mandate must provide this responding Article Three Judge with a full and fair opportunity to present the truth in order for him to be fully exonerated and restored to his independent role, dispensing the duties of his branch of government.

Respectfully Submitted,

Oscar B. Goodman

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UNITED STATES
v.
CLAIBORNE.
No. 84-1294.
United States Court of Appeals,
Ninth Circuit.
Dec. 30, 1985.

FERGUSON, Circuit Judge, dissenting from the order denying hearing *en banc*.

The refusal of the court to rehear this case *en banc* is lamentable. When the prosecution withholds vital exculpatory information, justice is denied. Rehearing *en banc* is necessary to correct the substantial curtailment of a defendant's right to discover impeachment material pursuant to the Jencks Act, 18 U.S.C. § 3500, and *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

Defense access to exculpatory or impeachment evidence within the government's possession is a vital constitutional and statutory right. *See Brady*, 373 U.S. at 87, 83 S.Ct. at 1196; *United States v. Polizzi*, 500 F.2d 856, 893 (9th Cir.1974) ("The prosecution is obligated to disclose to the defense statements falling within the Jencks Act regardless of anyone's perception of the utility of the statements for impeachment."), *cert. denied*, 419 U.S. 1120, 95 S.Ct. 802, 42 L.Ed.2d 820 (1975). Impeachment evidence plays a pivotal role in any trial, *see, e.g., Davis v. Alaska*, 415 U.S. 308, 316, 94 S.Ct. 1105, 1110, 39 L.Ed.2d 347 (1974), and withholding impeachment evidence in this case denied the defendant an effective defense.

Claiborne, a United States district court judge, was convicted of income tax evasion. His accountant, Wright, was an important prosecution witness. At trial, Claiborne presented evidence that his secretary delivered a letter to Wright revising the amount of his income. Wright testified that he had no recollection of receiving the letter and further that he never lost client files.

Thus, Claiborne's conviction hinged on Wright's credibility. Regrettably, the government and the trial judge failed to furnish Claiborne during the trial with damaging pretrial statements made by Wright.

Government agents' summaries of pretrial interviews with Wright indicate that he admitted to them that a substantial number of his client's files had been "thrown away." Despite a standing request under the Jencks Act and *Brady* for witnesses' pretrial statements, the defense learned of the summaries only after trial. At a posttrial hearing, the trial judge disclosed the existence of the summaries of the Wright interviews.

Although the judge reviewed some of the *in camera* material during trial, he examined none of the Wright material at that time. At the posttrial hearing, he reviewed some of the Wright material and concluded that none of it was Jencks Act or *Brady* impeachment material. Further, he failed to examine the remaining *in camera* material, some of which might have impeached Wright's testimony.

On appeal, the panel admitted that the Wright summaries were *Brady* impeachment evidence, but erroneously concluded that the failure to disclose the material was not prejudicial to the defense. *United States v. Claiborne*, 765 F.2d 784, 802–04 (9th Cir.1985). The panel's *Brady* analysis ignored *United States v. Bagley*, — U.S. —, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985), announced six days before *Claiborne*. Under *Bagley*,

> The evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A "reasonable probability" is a probability sufficient to undermine confidence in the outcome.

Id. at 3384. The panel should have decided whether suppression of the Wright interview material "undermined confidence in the outcome of the trial." Instead, the panel employed a two part test: whether the evidence would have "created a reasonable doubt" or whether it "might have affected the outcome" of the trial. *Claiborne*, 765 F.2d at 802–03.

Ample evidence from the record supports the conclusion that suppression of the material undermines confidence in the trial outcome. Wright was a key witness in the government's case. Evidence that a significant number of his clients' files had been discarded, directly contradicting his earlier testimony, would certainly undermine his credibility sufficiently for the jury to conclude that the defendant had testified truthfully. Thus, Claiborne's conviction should have been reversed because the government withheld *Brady* impeachment evidence of one of its key witnesses.

(Travaglia also

Similarly, the panel's Jencks Act analysis was incorrect. The panel denied Claiborne access to the Wright summaries because they were not transcribed "in a substantially verbatim fashion" and the government agents did not draft them contemporaneously with Wright's interview. *Id.* at 801. After *Claiborne*, the government need only produce 18 U.S.C. § 3500(e)(1) statements actually read or drafted by the witness, and 18 U.S.C. § 3500(e)(2) statements drafted by an agent before the interview is over. This reasoning conflicts with *Campbell v. United States*, 373 U.S. 487, 83 S.Ct. 1356, 10 L.Ed.2d 501 (1963), and significantly reduces a defendant's ability in this circuit to obtain witness statements taken by government agents.

Under *Campbell*, section 3500(e)(1) statements need not be signed or written by the witness, or even be a substantially verbatim recording of a prior statement. *Id.* at 492 n. 6, 83 S.Ct. at 1360 n. 6. The Court held that the FBI agent's recitation of the "substance" of his rough notes, which were "not a complete word-for-word transcription" of the interview, demonstrated sufficient adoption by the witness for purposes of the Jencks Act when the witness told the agent "he had got it straight." *Id.* at 489–90, 83 S.Ct. at 1359–60. The FBI agent wrote his report, based on rough notes and personal memory, seven hours after the witness interview. *Id.* at 490, 83

S.Ct. at 1359. The Court imposed no requirement or expectation that the agent draft a witness statement during an interview. Rather, *Campbell* recognized the informal and commonplace FBI practice of taking rough notes during an interview and later transcribing them into statements. This practice in *Campbell* made the witness statements no less susceptible to disclosure under the Jencks Act.

The fundamental error the panel committed was its failure to conduct an independent examination of the materials on which the trial court based its rulings. I fail to see how the panel, without looking at that material, could have fairly decided whether those rulings were erroneous. A reviewing court has an obligation to examine *Brady* and Jencks Act material to ensure that the district court's rulings were correct. *See Campbell,* 373 U.S. at 493, 83 S.Ct. at 1360. After the district court judge opened the *in camera* material at the posttrial hearing, he resealed the withheld documents. The documents have not been unsealed or read by anyone since the district court's posttrial hearing.

The *en banc* call in this case has been difficult for the judges of this circuit. It may be that hearing the case *en banc* and potentially reversing the conviction would be viewed by the public as defending one of our own rather than fairly applying the law. However, a defendant's right to a constitutionally fair trial cannot be balanced against the perception of others. Of course, we have an obligation to ensure that the circuit's actions are evenhanded and unbiased. But that duty is not jeopardized here. We must uphold our responsibility to remedy violations of constitutional rights, and I dissent from the court's refusal to hear this case *en banc*.

UNITED STATES
v.
CLAIBORNE.

No. 84-1294.

United States Court of Appeals,
Ninth Circuit.

Jan. 30, 1986.

REINHARDT, Circuit Judge, dissenting:

I respectfully dissent from the court's refusal to hear Judge Claiborne's appeal en banc.

This case is a most unusual one in a number of respects. It raises serious questions about the fair and impartial administration of justice.

I

BACKGROUND

United States District Judge Harry F. Claiborne was originally indicted and tried in the United States District Court on four counts involving his alleged acceptance of bribes in the performance of his official duties, two counts of tax evasion unrelated to the alleged bribes, and one count of filing a false financial statement with the Judicial Ethics Committee. The false filing count was also unrelated to the bribery charges. The first jury was unable to reach a verdict on any of the counts, and a mistrial was declared. The government then dropped the most serious charges—the allegations relating to bribery—and Judge Claiborne was retried only on the unrelated tax and false filing counts. The second jury acquitted him of filing a false financial statement, but convicted him on the tax charges.

Judge Claiborne was tried before an out-of-circuit senior district judge specially assigned to preside over his case. The district judge sentenced him to a two-year term of imprisonment. A specially selected panel composed of three judges from other circuits affirmed his conviction. 765 F.2d

784 Judge Claiborne petitioned for a rehearing and suggested a rehearing en banc. The special panel denied the petition for rehearing and recommended that we reject the suggestion for a rehearing en banc. An active member of this court then called for a vote by the full court on whether to rehear the appeal en banc. The full court has now voted, and decided not to grant Judge Claiborne a rehearing.[1]

Throughout these proceedings, Judge Claiborne has claimed that his investigation and prosecution constituted a part of an effort by the Department of Justice's Organized Crime Strike Force and the F.B.I. to discredit him personally and bring about his removal from the bench. Prior to his appointment in 1978, Judge Claiborne had been a prominent trial lawyer and had defended numerous individuals accused of committing criminal offenses. He contends that after his appointment the government launched a vendetta against him as a result of his issuance of a number of significant rulings adverse to the Department of Justice in criminal cases.

The Strike Force and the F.B.I. appear to have begun investigating Judge Claiborne in early 1980. According to Claiborne, in the Spring of 1980 he was investigated by a Las Vegas grand jury at the request of those agencies. The investigation related to Claiborne's actions as a criminal defense attorney, particularly with regard to whether Claiborne participated in illegal wiretapping activities. Apparently the investigation proved fruitless and the grand jury, after several months of hearings, failed to return an indictment against Judge Claiborne. However, a local law enforcement officer who had supplied evidence exculpating Judge Claiborne was demoted to a desk job and was himself investigated by the F.B.I.

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letter

LaRue

Lee

On April 4, 1980 United States Marshals seized from the offices of the Strike Force a display satirizing Judge Claiborne and Chief Judge Foley. Claiborne's attorney had complained that the exhibit was intimidating and prejudicing members of the grand jury that was investigating the Judge, as well as witnesses who were testifying before the grand jury. At a subsequent hearing, Judge Foley described the display as "contemptuous" of the judicial process and the result of "gross misconduct."

Judge Claiborne alleges that the F.B.I.'s next step, taken in late 1980, was to launch another investigation of him on a different subject, and this time to open his mail. Judge Claiborne claims that when he unsealed an envelope he had received through the mail it contained not only the enclosure intended for him but also an enclosure sent to another individual, a person who was also a target of the then current F.B.I. investigation. According to Claiborne, that investigation concerned his sentencing of Gus Gallo, a convicted bookmaker, and resulted from the belief of some Justice Department officials that Gallo had not received a sufficiently severe sentence. The Gallo investigation also apparently came to nought.

O'Donnell

Next, the government obtained statements from one Joseph Conforte that Judge Claiborne had solicited and accepted bribes from him. Based on Conforte's statements, the Strike Force, the F.B.I., and the Internal Revenue Service commenced still another investigation of Judge Claiborne. Conforte was the long-time owner of the Mustang Ranch brothel in Storey County, Nevada, a former client of Judge Claiborne's and a fugitive from justice. Conforte had been sentenced to 20 years in prison after being convicted of four counts of failing to withhold federal income taxes from the salaries of certain of his employees. According to newspaper articles contained in the court record, Conforte's first charge against Claiborne was that he had bribed him in connection with the Judge's adjudication of certain post-trial motions in Conforte's criminal case.

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[1] As is explained at p. 1330, *infra*, six out of 25 active judges recused themselves and did not participate in the vote.

That charge apparently collapsed when it was determined that Judge Claiborne had never presided over or ruled on any aspect of Conforte's case, and that the motions had been decided by a district judge from California prior to Judge Claiborne's appointment to the bench.

Undiscouraged, the government began pursuing two other claims by Conforte that he had bribed the Judge. One of these bribery charge related to Judge Claiborne's treatment of certain subpoenas issued to employees of Conforte in a voting fraud investigation. The other involved a bribe supposedly paid to the Judge so that he would secure a favorable outcome in Conforte's appeal from his tax conviction; at the time of this alleged bribe the appeal was pending before a panel of this court. We ultimately affirmed Conforte's conviction, but remanded for resentencing on three of the counts. *United States v. Conforte*, 624 F.2d 869 (9th Cir.1980). The Supreme Court denied a writ of certiorari, 449 U.S. 1012, 101 S.Ct. 568, 66 L.Ed.2d 470 (1980), and shortly afterwards Conforte fled to Brazil.

The District Director of the Internal Revenue Service in Reno, Nevada, who was fully familiar with Conforte's background and record, opposed the investigation of Judge Claiborne, because it was based almost exclusively on Conforte's statements. In early 1982, the F.B.I. and the Internal Revenue Service launched a "sting" operation involving an attempt to bribe the District Director. In late 1982, after the plan to "bribe" him had failed, the District Director was transferred to another office. A Treasury Department investigator later condemned the F.B.I.—I.R.S. sting operation as "very dangerous, misleading and poor work."

Swanson

Beginning in September 1982, the F.B.I. and the Department of Justice presented their case against Judge Claiborne to a grand jury in Portland, Oregon. Conforte did not testify because he was still a fugitive from justice. The grand jury failed to return an indictment.

The government's allegations were presented to a second grand jury in Portland beginning in early 1983. Conforte remained a fugitive. The grand jury once again failed to return an indictment.

Meanwhile, Conforte had been attempting for some time to negotiate a deal with the government. In late 1983 an agreement was reached under which Conforte would return from Brazil and be resentenced to four concurrent terms of five years each, 15 months of which were to be actually served in prison, while the remainder would be suspended. In addition, the government agreed to drop federal bail-jumping charges and persuade Nevada state officials to drop certain state charges against Conforte, as well as convince state prosecutors to agree to concurrent sentences on all remaining state charges.

Conforte Deal

Conforte returned to this country on December 4, 1983. In the meantime the government had presented his charges against Judge Claiborne to still another grand jury. This time, however, the government did not proceed in Portland, but chose Reno, Nevada as its forum. Conforte testified before the Reno grand jury three days after his return. The following day the grand jury returned a seven count indictment against the Judge.

One week after Judge Claiborne's indictment, Conforte was resentenced by Judge John Lewis Smith of the United States District Court for the District of Columbia. Conforte's case had been transferred to Judge Smith in October 1982 by order of the Chief Justice of the United States after the District Judge in Nevada who had previously presided over the case recused himself. The reduction in Conforte's sentence may well have violated Fed.R.Crim.P. 35, *see United States v. Hetrick*, 644 F.2d 752 (9th Cir.1980); *United States v. Pollack*, 655 F.2d 243 (D.C.Cir.1980), as well as 18 U.S.C. § 3651 (1982), not to mention the Justice Department's policy on tardy motions to reduce sentences.

Senior United States District Judge Walter E. Hoffman, of the Eastern District of Virginia, was specially designated by the

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Wright - 10 hrs

Chief Justice to preside over Judge Claiborne's trial. In early 1984, Judge Hoffman denied a series of pretrial motions filed by Claiborne. (Previously, Judge Hoffman had been specially designated by the Chief Justice to preside over the Portland and Reno grand jury investigations. These designations, like the trial designation, were made following a request by the Chief Judge of this circuit that an out-of-circuit district judge be appointed.) An appeal to this court followed.

At the time of the pre-trial appeal, the case against Judge Claiborne still included the charges relating to his alleged acceptance of a bribe intended to influence the results in an appeal before one of our panels. We as a court agreed, although in a rather informal manner, to recuse ourselves from hearing Judge Claiborne's pretrial appeal. The Chief Justice then specially selected a panel of three judges from other circuits to hear it. The special panel affirmed the pretrial rulings of the specially assigned district judge. 727 F.2d 842, *cert. denied*, — U.S. —, 105 S.Ct. 113, 83 L.Ed.2d 56 (1984).

The trial then proceeded, with Joseph Conforte as a key government witness. Despite, or perhaps because of, Conforte's testimony the jury could not agree on a verdict on any of the counts.

Because the government abandoned the bribery charges prior to the second trial, Conforte did not testify the next time the prosecution sought to convict Judge Claiborne. Judge Hoffman once again presided over the trial. After the jury returned a guilty verdict on the tax charges, Judge Claiborne again appealed. This time we took no action to recuse ourselves. In fact, we did nothing at all. Although the bribery charges that indirectly involved our court in the proceedings were no longer a part of the case, we simply failed to consider, formally or informally, the question whether we now had an obligation to hear the appeal or whether a new special panel should be appointed. Apparently acting on the assumption that our prior recusal was a continuing one, the Chief Justice specially selected another panel of three judges from other circuits to hear the appeal.

II

ANALYSIS

It is clear to me that there was no reason in fact or law why a panel of judges of this court could not have heard Judge Claiborne's post-conviction appeal. The bribery charges had been dropped; the tax charges were unrelated to any alleged bribe and they in no way involved any member of this court. Moreover, our subsequent actions, specifically our en banc vote, show quite plainly that the overwhelming majority of the judges of our court believed that they were not required to recuse themselves from voting on a critical aspect of the proceedings on appeal. Our vote on the en banc call reveals that 19 members of this court, out of a then total of 25, concluded that it was proper for them to vote on the question whether or not Judge Claiborne's appeal should be given en banc consideration. Only six thought they were required to recuse themselves from participating in that decision. Because in my view there can be no distinction drawn between the propriety of a judge's voting on a call for a hearing en banc and the propriety of a judge's hearing the appeal itself, I believe that any three of the 19 judges of our court who voted on the en banc call could properly have heard the post-conviction appeal. Thus, in actuality, there was no need for the appointment of any out-of-circuit judges.

In my view, it is clear that we as a court committed a serious error in our handling of this case, an error with serious consequences. Specifically, we erred when we failed to consider whether we should hear Judge Claiborne's appeal from his conviction or whether, instead, the appointment of a second special panel was required. Because of our error, outside judges were appointed to hear an appeal that we had an obligation to hear ourselves. Our court system is structured so that a defendant will normally have his trial and any appeals heard by judges residing in the circuit in which the charged crime was allegedly committed. Here, we erroneously, albeit inadvertently, deprived Judge Claiborne of this feature of our laws; en banc consideration of the Judge's case would have been a proper means of at least partially remedying our mistake.

Rehearings en banc provide a means for ensuring that the law of our circuit is applied not only consistently but correctly. Here, as a result of our failure to act, judges from other circuits, not as familiar as we are with the precedents of our court, considered a case that we had a duty to hear.[2] Judge Claiborne's appeal raises several issues of importance.[3] In disposing of at least one of those issues, the special outside panel cited no authority from any appellate court, let alone a decision by the judges of this court. The special panel also stated that it was not following the result reached in two of the three district court opinions that it cited. 765 F.2d at 794–95. In my view, when a substantial question of law not previously decided by the judges of this court is decided by a panel of outside judges and we subsequently recognize that we have erred in failing to decide that question ourselves, it is our responsibility to grant en banc reconsideration. Moreover, in this case there are additional reasons why we should have granted an en banc hearing. *See infra* at pp. 1332–33.

Some of the members of this court who voted against an en banc hearing may have believed that an appearance of impropriety would arise if we were to review the conviction of a district judge who sits within the geographical boundaries of the Ninth Circuit; they may have thought that a decision to hear Judge Claiborne's case en banc would be ill-advised since it might cause some to think less well of our court, or of courts in general. I respectfully suggest that a vote influenced by such institutional concerns would unfairly prejudice Judge Claiborne's rights and contravene basic principles governing the law of recusal.

Courts must always strive to administer justice in a manner such that there is no appearance of either impropriety or injustice. At the same time, a court must never deprive a person of his right to just treatment or the opportunity to avail himself of the full procedural rights or protections to which he is entitled. Certainly it must not do so merely because a judge believes that it may appear to some persons that in affording an individual those rights the court has acted improperly. Our highest duty at all times is to provide justice to all litigants; no other principle is as important.

Normally, there is no conflict between our duty as individual judges to appear impartial and our obligation to afford justice to all. In those cases in which there is a conflict, there is usually some method of ensuring that both goals can be accomplished within the normal procedures governing the operation of the judicial system. For example, a trial judge faced with such a conflict can recuse himself, and another trial judge can be substituted. So, too, a circuit judge can, normally, readily be replaced by another circuit judge or even by a district judge. There are, however, a few cases in which there is no mechanism for resolving the conflict in a manner that allows the court to honor both obligations fully. In such cases the obligation to do justice prevails and the "rule of necessity" applies. Under that rule, the court must hear the case and do justice even though an appearance of interest or impropriety may exist. *See United States v. Will*, 449 U.S. 200, 213–17, 101 S.Ct. 471, 480–82, 66 L.Ed.2d 392 (1981).

The fact that Harry Claiborne is a United States District Judge does not mean that he is less entitled than any other individual to the full benefit of the orderly procedures of this court. Those procedures, including en banc consideration, have been established to ensure that justice is done. Our en banc process is also designed, as I noted earlier, to ensure that the law of this circuit will be applied uniformly to all defendants. Judge Claiborne has just as much right to have his case considered en banc as any other defendant. En banc proceedings are different in one critical respect, however, from all other proceedings this court conducts: only the judges of our court can hear a case of ours en banc. There is no procedure in current law for obtaining an out-of-circuit en banc panel. This is true even when an appeal is heard initially by a specially selected panel of out-of-circuit judges. Thus, if in fact an appearance of impropriety existed here, the rule of necessity would apply, and we would be required to disregard that appearance. Accordingly, if a factor in our decision to deny Judge Claiborne en banc consideration of his case was our concern over an appearance of impropriety, we have, in my view, seriously misconstrued our duty as judges of this circuit. In doing so, we have, unfortunately, also denied Judge Claiborne equal justice.

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[2] While circuit judges from other circuits and district judges sit on Ninth Circuit panels, title 28 requires that at least two of the judges on any panel be judges of this court. 28 U.S.C. § 46(b)(1982). *See also* Ninth Circuit General Order 3.2(a) (same).

[3] *See* Judge Ferguson's companion dissent for a discussion of two of those issues.

Moreover, had we agreed to rehear Judge Claiborne's case en banc, there would have been neither any actual impropriety nor any appearance of impropriety in our doing so. In my opinion, the public has the identical perception of a court of appeals' reviewing a district judge's conviction whether the appellate judges come from the same geographic area as the district judge or not. To most people the appearance would be similar whether the appellate judges were from the Ninth Circuit, or from the Second, Seventh or Tenth Circuits. If there were any appearance of impropriety in our hearing Judge Claiborne's case, it would stem from the fact that we are all judges together, all members of the "judicial fraternity", not from the happenstance of our physical locations.[4] Yet, no one has suggested that the special panel of circuit judges did not act in a proper and impartial manner, or that an appearance of impropriety exists because that panel might have favored Judge Claiborne. I believe the public is sophisticated enough to accept the fact that if a judge is to be tried, he will be tried before colleagues who are members of the same profession and that those colleagues may in some cases even reside in the same section of our nation. In short, I do not believe that reasonable persons would have had cause to think that any impropriety might have existed had we, as a court, simply followed our regular procedures and heard Judge Claiborne's post-conviction appeal in the normal course.

There is, however, an appearance of impropriety or injustice in this case—one that I fear a majority of my colleagues may fail to recognize. That "appearance" does not militate against affording Judge Claiborne en banc consideration; rather, it strongly militates in favor of granting him a hearing. Our refusal to do so allows the record to rest with the appearance that Judge Claiborne may have been the object of *adverse* special treatment and, thus, the victim of injustice. Judge Claiborne is one of the few criminal defendants in the Ninth Circuit, if not in the nation, whose case has been handled, both in the District Court and in the Court of Appeals, exclusively by judges specially and specifically chosen to hear that particular case.[5] There is, in my opinion, a rather substantial appearance of injustice when a defendant who claims he is the victim of a vendetta on the part of various branches and agencies of the Department of Justice is deprived of the opportunity to be judged by those who would normally preside over his case and instead is tried and convicted before, and has his of that circuit pursuant to 28 U.S.C. § 292(b). A random selection system could also be devised for use by the chief judge of a circuit when he is required to make such a designation and assignment for purposes of a specific criminal case.[6]

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[4] Of course, if an individual judge has a particular personal or professional relationship with the defendant, individual recusal may be required.

[5] There are no available statistics regarding the number of cases in which a similar designation of both out-of-circuit district and circuit judges has been made. Informal research makes it clear, however, that the procedure is invoked infrequently.

IV

CONCLUSION

For the reasons set forth above, I respectfully dissent from the court's denial of an en banc hearing.[7]

TESTIMONY OF WITNESSES

The managers will call their first witness.

Mr. HUGHES. Good morning, Mr. Chairman, members.

The managers on behalf of the House of Representatives calls as its first witness Joseph C. Wright.

The CHAIRMAN. While Mr. Wright is coming forward, I note for the members that in your folders, there are copies of the exhibits.

Mr. Wright, will you stand and raise your right arm?

Do you swear that the testimony you shall give in this impeachment proceeding is the truth, the whole truth, and nothing but the truth so help you God?

Mr. WRIGHT. I do.

The CHAIRMAN. Mr. Wright, I understand that you would prefer to sit at this time?

DIRECT EXAMINATION

Mr. HUGHES. Please state and spell your last name for us.

Mr. WRIGHT. Joseph C. Wright, W-r-i-g-h-t.

Mr. HUGHES. Mr. Wright, do you have a nickname?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. What is that?

Mr. WRIGHT. Jay.

Mr. HUGHES. How do you spell that?

Mr. WRIGHT. J-a-y.

Mr. HUGHES. Where do you live, Mr. Wright?

Mr. WRIGHT. 1924 East Old Key Boulevard in Las Vegas, NV.

Mr. HUGHES. Are you married, sir?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. Do you and your wife have any children?

Mr. WRIGHT. Yes, sir. We have three daughters.

Mr. HUGHES. Mr. Wright, how old are you at the present time?

Mr. WRIGHT. Sixty-five years old.

Mr. HUGHES. And where were you born?

Mr. WRIGHT. Winnsboro, TX; eastern part of Texas.

Mr. HUGHES. Is that where you remained, in eastern Texas?

Mr. WRIGHT. No, sir. I went from there, at 4 years old, to West Texas.

Mr. HUGHES. Where did you receive your primary and secondary education, Mr. Wright?

Mr. WRIGHT. In west Texas, graduating from the Spring Lake High School.

Mr. HUGHES. OK. What did you do after graduation from high school?

Mr. WRIGHT. Shortly after high school I joined the Air Force, where I spent 5 years.

Mr. HUGHES. When was that, Mr. Wright?

Mr. WRIGHT. 1941 to 1945.

Mr. HUGHES. Just before the war you joined?

Mr. WRIGHT. Yes, sir. Joined just before the war.

Mr. HUGHES. Mr. Wright, what special training did you receive in the Air Force?

Mr. WRIGHT. First I went to radio operator and mechanics school at St. Louis, IL; graduated there in September 1941. And went to Luke Field where I rejoined my outfit after graduation.

Mr. HUGHES. What special training did you have there?

Mr. WRIGHT. Nothing at Luke Field at that time.

When war broke out, though, on December 7, 1941, I applied for cadet training and was accepted and went to California for my primary training and basic training in cadets and back to Luke Field, where I graduated as a fighter pilot on December 3, 1942.

Mr. HUGHES. Where were you stationed after your graduation?

Mr. WRIGHT. I went to Las Vegas, NV. At that time McCarren Field, which has now been renamed Dulles Air Force Base, where I remained for 2½ years.

Mr. HUGHES. Is that close to Las Vegas?

Mr. WRIGHT. Yes, sir. That's about 7 miles northeast of Las Vegas.

Mr. HUGHES. When did you arrive in Las Vegas, Mr. Wright?

Mr. WRIGHT. December 5, 1942.

Mr. HUGHES. How long after your graduation would that have been?

Mr. WRIGHT. Just a couple of days, sir.

Mr. HUGHES. Had you ever been to Las Vegas prior to that time?

Mr. WRIGHT. No, sir.

Mr. HUGHES. Mr. Wright, when did you get married?

Mr. WRIGHT. April 21, 1944.

Mr. HUGHES. Where did you meet your wife?

Mr. WRIGHT. In Las Vegas. She was working in a restaurant for her brother-in-law where a lot of us went to eat many times. And I had gone in to tell her that one of my classmates and a friend of hers had been killed that day, and that was the first that I actually met her.

Mr. HUGHES. Mr. Wright, while you were stationed in Las Vegas at this time, did you also have an occasion to meet a man named Harry E. Claiborne?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. Where did you meet him?

Mr. WRIGHT. On the base where we were both stationed. He was in the legal section, and he defended one of my classmates.

Mr. HUGHES. Can you tell us about when that was?

Mr. WRIGHT. Sometime in 1943.

Mr. HUGHES. What was the nature of your relationship with Mr. Claiborne at that time?

Mr. WRIGHT. He was a friend at that time, just an acquaintance and became a friend.

Mr. HUGHES. Did there come a time when you left Las Vegas?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. Can you describe that to us?

Mr. WRIGHT. Yes, in 1944 when we were relieved from our restriction at the base by General Arnold, I went to Hobbs, NM, for B-29 training. We had to get 100 hours of instruments there.

Then from there I went to Roswell, where we would actually get our training in B-29 itself.

Mr. HUGHES. And where did you receive that training when you were restationed?

Mr. WRIGHT. In 1944. At Roswell at Hobbs, NM.

Mr. HUGHES. At Roswell Air Force Base in New Mexico?

Mr. WRIGHT. Yes.

Mr. HUGHES. How long were you in the service, Mr. Wright?

Mr. WRIGHT. Five years.

Mr. HUGHES. After you left the service, did you remain active in any way in the service?

Mr. WRIGHT. I stayed in the reserves for about 10 years and finally resigned my commission in 1955 or 1956.

Mr. HUGHES. I see.

What training or education did you receive after you left the service?

Mr. WRIGHT. I went to the University of Utah in Salt Lake City and studied at the business school there with a major in accounting; graduated from the school of business in June 1948 with a major in accounting.

Mr. HUGHES. So your course of study at that time was accounting?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. Did you minor in any other subject?

Mr. WRIGHT. In economics; yes, sir.

Mr. HUGHES. I see.

Did you complete the program?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. So you graduated, as you indicated, in 1948 from the School of Business?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. Did you actually receive a degree at that time?

Mr. WRIGHT. No, sir. They threw out one of my lower division subjects as being duplicated in high school subjects, so they would not issue me a degree.

Mr. HUGHES. So while you graduated, you did not receive a degree because of one credit.

Mr. WRIGHT. That's right.

Mr. HUGHES. What did you do after you left school?

Mr. WRIGHT. I went back to Las Vegas where my wife's family was in business, and I started my practice there early in 1949.

Mr. Hughes. Did you at first in Las Vegas start your own practice, or did you work for somebody?

Mr. WRIGHT. No, sir. I worked for another accountant for a short period of time and was a craps dealer for a short period of time.

Mr. HUGHES. And how about your wife; was she employed at that time?

Mr. WRIGHT. Yes. She was a secretary and a cashier for her brother's business.

Mr. HUGHES. When did you begin your practice as a public accountant?

Mr. WRIGHT. The first part of 1949.

Mr. HUGHES. Are you still employed as a public accountant in Nevada?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. How many years' experience do you have as of today as a public accountant?

Mr. WRIGHT. Thirty-five years.

Mr. HUGHES. I see.

Are you a certified public accountant?

Mr. **Wright**. No, sir.

Mr. **Hughes**. I see.

Mr. **Wright**. I have never sat for the examination, sir.

Mr. **Hughes**. That is what would be required to receive a CPA designation?

Mr. **Wright**. Yes, sir.

Mr. **Hughes**. Are you licensed by the State of Nevada as a public accountant?

Mr. **Wright**. Yes, sir.

Mr. **Hughes**. And how long have you been so licensed?

Mr. **Wright**. Since we have had licensing in Nevada. I was issued the 136 license.

Mr. **Hughes**. So you would have been one of the first classes in Nevada to have received their license?

Mr. **Wright**. Yes, sir.

Mr. **Hughes**. Mr. Wright, what, if any professional organizations, are you a member of?

Mr. **Wright**. I belong to the Nevada Society of Public Accountants and to the National Society of Public Accountants.

Mr. **Hughes**. Have you ever held any offices in those particular organizations?

Mr. **Wright**. Yes, sir. I have been president and vice president, secretary and treasurer of the Nevada Society of Public Accountants; and the Nevada State director of the National Society of Public Accountants.

Mr. **Hughes**. So it is fair to say that you have been active since you began the practice of accounting?

Mr. **Wright**. Very active.

Mr. **Hughes**. Mr. Wright, can you describe the general nature of your accounting practice?

Mr. **Wright**. It is a general broad-based type of accounting practice. All small businesses, mainly. I had three of the major slot route operators as clients.

Mr. **Hughes**. About how many income tax returns do you prepare each year, Mr. Wright?

Mr. **Wright**. Between 100 and 200. Not what you would call a tax practitioner; it was just general accounting with 100 to 200 returns.

Mr. **Hughes**. You would prepare between 100 and 200 a year?

Mr. **Wright**. Yes, sir.

Mr. **Hughes**. Mr. Wright, what is your present state of health?

Mr. **Wright**. It is good. Still having a little trouble breathing. But basically my health is good.

Mr. **Hughes**. Have you recently had major surgery, Mr. Wright?

Mr. **Wright**. Yes, sir. In 1982 I had lung cancer and had my right middle lobe removed and they decided to give me radiation. And after that—it just about killed me, but I think I have pretty much recovered from that now.

Mr. **Hughes**. How do you feel today?

Mr. **Wright**. Very nervous, but basically in good health.

Mr. **Hughes**. That is understandable. Are you presently on medication, Mr. Wright?

Mr. **Wright**. No, sir.

Mr. HUGHES. Mr. Wright, when you returned to Las Vegas, what, if any, further contacts did you have with Harry Claiborne?

Mr. WRIGHT. As I say, I had set up my office in the office of my brother-in-law's restaurant. And Mr. Claiborne would come into the restaurant to have lunch almost every day, and so we struck up and renewed our acquaintance again and became good friends. And shortly thereafter, he became a client of mine.

Mr. HUGHES. Can you give us some approximate date when that was?

Mr. WRIGHT. Either 1949 or 1950.

Mr. HUGHES. Over the years, what accounting work did you do for Harry Claiborne?

Mr. WRIGHT. We did a general bookkeeping service, which is writing up his check registers and recording his receipts and doing his banking for him, preparing his quarterly reports for his employees and their W-2's at the end of the year, summarizing all those records at the end of the year, and filing his return.

Mr. HUGHES. Would that include doing a trial balance?

Mr. WRIGHT. Yes, sir. That's summarizing trial balances worked at the end of each year.

Mr. HUGHES. During the years that you did work for Mr. Claiborne, prior to his going on the Federal bench what system did you use to keep track of Mr. Claiborne's income from legal fees?

Mr. WRIGHT. Well, we would record his legal fees from data that he supplied and/or his bank statements wherein we got his total deposits. And in latter years, we basically used, you know, his bank statements and his total deposits as his fee income. And the bank statements were actually sent from the bank right to our offices.

Mr. HUGHES. So there came a time when the bank statements were sent directly to you——

Mr. WRIGHT. Yes, sir.

Mr. HUGHES [continuing]. Your accounting office?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. And it was that information you often used——

Mr. WRIGHT. That's right, sir.

Mr. HUGHES [continuing]. In connection with the preparation of your work for Mr. Claiborne?

Mr. WRIGHT. His total deposits would be his income, unless he instructed me that a deposit or a part of a deposit was not, in fact, income, or fee income.

Mr. HUGHES. Mr. Wright, did Harry Claiborne, in the years that you worked for him, ever tell you that he simply cashed a fee check rather than deposit it into his account?

Mr. WRIGHT. No, sir.

Mr. HUGHES. Mr. Wright, were you aware that in 1978 Mr. Claiborne had become a Federal judge?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. Do you remember the date?

Mr. WRIGHT. Yes, sir. September 1, 1948.

Mr. HUGHES. I am sorry, September 1——

Mr. WRIGHT. September 1, 1948.

Mr. HUGHES. 1948?

Mr. WRIGHT. Excuse me. 1978.

Mr. HUGHES. September the 1st of 1978?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. What, if any, tax consequences were there in connection with Judge Claiborne's move from the private practice of law to the Federal bench?

Mr. WRIGHT. Basically nothing. We continued to be his accountant and received his bank statements which were becoming less and less. The income or the deposits were very small. The checks were very——

Mr. GOODMAN. Excuse me, Mr. Chairman. Pardon me for interrupting. We are having a difficult time hearing the witness.

Mr. HUGHES. Mr. Wright——

The CHAIRMAN. Mr. Wright, if you can speak a little more loudly.

Mr. WRIGHT. All right, sir.

Mr. HUGHES. The question was whether there were any tax consequences in connection with that move from private practice to the Federal bench, any outstanding work that had to be done for previous years.

Mr. WRIGHT. Yes, sir. We did continue to summarize his active practice in his business. We did continue to get his bank statements, but the deposits and checks were filtering down to practically nothing, just paying the final bills and the collections on his prior fees that were dribbling in.

Mr. HUGHES. Mr. Wright, I would like to show you a document that has been marked as House exhibit No. 34 and ask if you can identify this particular document.

Mr. WRIGHT. Yes, sir. This is Harry Claiborne's 1979 personal income tax return.

Mr. HUGHES. What year is that, Mr. Wright?

Mr. WRIGHT. 1979.

Mr. HUGHES. I am going to ask you, Mr. Wright, what is, in fact, marked as House exhibit No. 34 and ask you if you can identify that document for us.

Mr. WRIGHT. 34 is Harry Claiborne's 1978 personal income tax return.

Mr. HUGHES. That is his 1978 income tax return.

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. And who prepared that for Mr. Claiborne?

Mr. WRIGHT. I did, sir.

Mr. HUGHES. Is that your signature on that return?

Mr. WRIGHT. Yes, it is, sir.

Mr. HUGHES. Is that a true copy of the return as filed?

Mr. WRIGHT. It appears so, sir. Yes, sir.

Mr. HUGHES. Mr. Chairman, I would at this time move to admit House Exhibit 34 into evidence.

The CHAIRMAN. It will be accepted.

Mr. Goodman, do you have any objection?

Mr. GOODMAN. May I have the Chair's indulgence for one moment, please.

[Pause.]

Mr. GOODMAN. Mr. Chairman, we would object on the grounds of relevance and materiality because of the year 1978 not being one of the years in question, as far as the articles are concerned.

Mr. HUGHES. Mr. Chairman, the document is relevant because it bears upon the writeoff of certain items of practice equipment used in the practice of law, which became an issue in this matter and accordingly would be relevant for that purpose.

The CHAIRMAN. The objection will be overruled.

Mr. HUGHES. Thank you, Mr. Chairman.

[Whereupon, House exhibit No. 34 was received in evidence.]

Mr. Wright, can you explain what, if any, tax consequences resulted from the closing of Judge Claiborne's private practice?

Mr. WRIGHT. Yes, sir. We did write off all the rest of his assets because they were no longer being used in his practice. In fact, he gave away many of those items and sold his library. So we wrote off all the assets, taking a basic library expense against the sale price. And the rest of the items as a balance of depreciation.

Mr. HUGHES. I wonder if you will examine House exhibit 34 and indicate where that information is reflected in the return.

Mr. WRIGHT. Yes, sir. The balance of depreciation is reflected on the depreciation schedule and the sale of the library is reflected on the supplemental gain and loss schedule, wherein we show the library was sold for $13,573. The total basis—original cost basis——

Mr. HUGHES. I wonder if you can speak up, Mr. Wright.

Mr. WRIGHT. Yes, sir.

The total cost basis of the original items were $19,345; remaining basis was $6,600; and his gain on that was $6,964.

Mr. HUGHES. So it showed a gain of $6,900——

Mr. WRIGHT. Yes, sir.

Mr. HUGHES [continuing]. In the tax return?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. Were there any consequences, tax consequences, relative to the sale of the business in that return?

Mr. WRIGHT. Yes, sir. The investment tax credit, items that are not used as long as you originally said they are going to, you must recapture the investment tax credit on those items.

Mr. HUGHES. Can you explain how that came about?

Mr. WRIGHT. Well, on the cessation of his private practice, those items were no longer used. So you must recapture the investment tax credit as of September 1 of that year.

Mr. HUGHES. In other words, there was a write-off of certain equipment that qualified?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. Or capital assets that qualified for an investment tax credit?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. Since they were not used for the period of time——

Mr. WRIGHT. That is right.

Mr. HUGHES [continuing]. That they were estimated to be used for, there was a certain gain involved in that?

Mr. WRIGHT. That is right, sir.

Mr. HUGHES. And that is reflected in the 1978 tax return?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. Mr. Wright, when Harry Claiborne became a judge, did the nature of your accounting work for him change?

Mr. WRIGHT. Well, actually, yes, because I did not receive the information on a monthly basis as we did originally. However, we still did use his total deposits as a basis for his fee income. But the regular deposits and detailed work did not come to us on the regular monthly basis any more.

Mr. HUGHES. So what you are saying is that when the judge went on the bench in September 1978 that there was a change?

Mr. WRIGHT. That is right, sir.

Mr. HUGHES. Over what period of time did you notice that change?

Mr. WRIGHT. Well, immediately. Because the bank statements were just nothing. Just a few checks were coming through, paying the last bills, and the deposits were negligible, too.

Mr. HUGHES. Mr. Wright, when you stopped getting information from the bank, how did you learn the amounts of Judge Claiborne's income and expenses?

Mr. WRIGHT. He sent me a memo telling me what they were, sir.

Mr. HUGHES. So there came a time when you received no information except what Judge Claiborne furnished you.

Mr. WRIGHT. That is right, sir.

Mr. HUGHES. In 1979 and 1980, what other sources of information were available to you to secure that information?

Mr. WRIGHT. There was no other source, other than Judge Claiborne.

Mr. HUGHES. In what form would he give you the information

Mr. WRIGHT. Either by telephone or personal memos.

Mr. HUGHES. Can you recall approximately when it was that you received no other information from the bank, for instance, with regard to Harry Claiborne's fee income?

Mr. WRIGHT. Basically about the middle of 1979, we quit receiving anything at all.

Mr. HUGHES. Nothing at all?

Mr. WRIGHT. Nothing at all, sir.

Mr. HUGHES. Mr. Wright, when did you first receive information concerning Judge Claiborne's legal fee income for 1979?

Mr. WRIGHT. Some time in the early part of 1980, in February or March 1980.

Mr. HUGHES. And in what form did that come to you?

Mr. WRIGHT. As a memo from Judge Claiborne.

Mr. HUGHES. What form did that memorandum take?

Mr. WRIGHT. He listed his income for 1979 and deposits of 1979 and one item of 1980.

Mr. HUGHES. I see. Mr. Wright, I would like to show you a document that has been marked House exhibit No. 17 and ask you if you recognize this document.

Senator WARNER. Mr. Chairman, if I might interrupt, I see from the faces of many that we are not hearing. Might I suggest the witness raise his microphone and speak into it? I think it is important.

Mr. WRIGHT. All right, sir.

Senator WARNER. I think that would be very helpful.

Mr. HUGHES. Mr. Wright, I ask you to examine House exhibit No. 17 and ask if you recognize this document?

Mr. WRIGHT. All right, sir.

Yes, sir. This is a document addressed to Jay, myself, from Judge Claiborne.

Mr. HUGHES. And in whose handwriting is that?

Mr. WRIGHT. This is in Judge Claiborne's writing, most of it. Later I have made notes along the right side and the left side of his original memorandum.

Mr. HUGHES. But most of that, the handwriting is in Judge Claiborne's handwriting?

Mr. WRIGHT. That is right, sir.

Mr. HUGHES. How do you recognize that handwriting?

Mr. WRIGHT. Well, I have seen his handwriting over a period of 30 years, and I do recognize it.

Mr. HUGHES. Were the notations on the side present when you first received that document?

Mr. WRIGHT. No, sir.

Mr. HUGHES. When did you receive the memorandum? Can you give us some better idea of the time?

Mr. WRIGHT. Yes. It would be some time after January 16, 1980 and March 7, 1980. I would suspect somewhere around the first part of March 1980.

Mr. HUGHES. I see. How do you fix that time span of January 16, 1980, to March 7, 1980, as a time when you would have received that document?

Mr. WRIGHT. This memorandum, the latest date on the memorandum, where he is stating his 1980 income, is a deposit on March 16, 1980, in the amount of $41,000. That is at the bottom of the memo. And I wrote a letter pursuant to this document dated March 7, I believe. I would imagine I received this about the first of March.

Mr. HUGHES. So it is because of a note that the income on January 16, 1980, which set one parameter.

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. And a date that you wrote to a mortgage company which set the March 7, 1980, parameter.

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. You indicated in your testimony you thought that it was in early March more specifically that you received the document.

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. How do you ascertain that particular date?

Mr. WRIGHT. Well, I would have acted upon his request to write the Stanwell Mortgage Co., as soon as I could have. So I would imagine I would not have had it more than a week before I wrote the letter.

Mr. HUGHES. Mr. Wright, I wonder if you will just speak right into that microphone.

Mr. WRIGHT. All right, sir.

Mr. HUGHES. OK. That is better.

Mr. Wright, when the Government's investigation of Harry Claiborne began, where was the original of this document?

Mr. WRIGHT. In my file, sir.

Mr. GOODMAN. Objection, Mr. Chairman. There is no foundation as to when the investigation began of Harry Claiborne nor is there any foundation that this witness has within his knowledge when the investigation began.

Mr. HUGHES. Well, we will establish it.

Mr. Wright, do you know when, approximately, the investigation of this case began by the Government?

Mr. WRIGHT. The first knowledge I have of it was some time in the early part of 1983.

Mr. HUGHES. The early part of 1983?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. All right. In the early part of 1983, Mr. Wright, where was this document?

Mr. WRIGHT. In my files.

Mr. HUGHES. And where were your files located?

Mr. WRIGHT. In my office in the file cabinets and storage files.

Mr. HUGHES. And how did you maintain your file for clients such as Harry Claiborne?

Mr. WRIGHT. We have a regular filing system. We have tax files and permanent record files, audit files, and journals and boxes or other storage bins where we keep larger documents.

Mr. HUGHES. Do you have an active file as opposed to an inactive file for clients?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. How do you maintain those?

Mr. WRIGHT. Well, those are always kept close at hand. Any current documents that come in relative to the current year, you just put them into the current working file.

Mr. HUGHES. Why had you maintained this memorandum in your files?

Mr. WRIGHT. It is pertinent to his income tax and is a current document that we would be referring to.

Mr. HUGHES. Mr. Wright, would you kindly take time now and read the document to the panel?

Mr. WRIGHT. All right, sir. It says, "Jay, I have"——

Mr. GOODMAN. Pardon me. We would object. The document is not in evidence, and therefore it should not be read from until it is entered into evidence and admitted.

Mr. HUGHES. Mr. Chairman, this was admitted into evidence by this committee last week as one of the instruments to be admitted in evidence. So it is already in evidence.

Mr. GOODMAN. I withdraw the objection, Mr. Chairman.

The CHAIRMAN. Counsel may proceed.

Mr. HUGHES. Mr. Wright, would you kindly take time at this time, and speak very clearly, and read the document to the panel?

Mr. WRIGHT. All right, sir. It is addressed to Jay. It says, "I have made application to assume a mortgage at this place. They wanted the letter from you of what my earnings were for 1978, 1979, and 1980 to date from my private practice, not earnings on the bench. Here is the tabulation taken from my deposits and authentic." Then he lists 1979, and the deposits listed underneath that is February 2, 1979, $20,672.17; April 19, 1979, $11,000; April 18, 1979, $1,000; May 23, 1979, is $4,332.87; May 30, 1979, is $761.16; August 10, 1979, is $7,000; November 20, 1979 is $655.73; a total of $45,371.93. And then below that is the notation, 1980, a deposit on January 16, 1980, $41,000. Signed, Harry Claiborne.

Mr. HUGHES. Was it unusual for Judge Claiborne to identify his fee income, as he says in the memorandum, "taken from my deposits?"

Mr. GOODMAN. Pardon me, Mr. Chairman. I would object on that characterization. The letter speaks for itself, and it does not indicate that those figures were in fact fee income figures.

What it does in the first paragraph, Mr. Chairman, is it suggests to Mr. Wright that the financial institution wanted to know what the judge's earnings from private practice were for 1978, 1979, and 1980 to date, and then all it says is there is a tabulation taken from deposits and authentic from 1979 and one for 1980 on the left-hand side, a figure of $11,000 for the sale of the airplane.

So to characterize that as fee income on those figures, I believe, is an untrustworthy characterization.

Mr. HUGHES. Mr. Chairman?

The CHAIRMAN. Can you rephrase your question, Mr. Hughes?

Mr. HUGHES. Mr. Wright, is it unusual for Judge Claiborne to identify the earnings for you during the year that you handled his accounting practice?

Mr. WRIGHT. Yes, sir. We did determine that all of those deposits would be fee income unless he indicated to me that they were something else.

Mr. HUGHES. So my question is: Was that unusual for him to identify what was fee income?

Mr. WRIGHT. Yes, sir. Over a period of time, we have identified items that were not income—or that is, was not fee income.

Mr. HUGHES. So your testimony, it was not unusual?

Mr. WRIGHT. That is right. Yes, sir.

Mr. HUGHES. There is a $1,000 item on April 18 that appears on the memorandum to have been squeezed in on the list of deposits. Was that entry present when you received the memorandum?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. What is the total written on the memorandum?

Mr. WRIGHT. $46,371.93.

Mr. HUGHES. Is that total correct, Mr. Wright?

Mr. WRIGHT. No, sir.

Mr. HUGHES. And why not?

Mr. WRIGHT. It is $45,371.93.

Mr. HUGHES. So there was a mathematical error made in computing that amount?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. It appears on the memorandum that the total originally had been written as $45,371.93, and then later changed to $46,371.93. Did you make that change?

Mr. WRIGHT. No, sir.

Mr. HUGHES. So that was on the memorandum when you received it?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. What, if anything, did you do in connection with your receipt of the memorandum?

Mr. WRIGHT. Judge Claiborne asked me to write letters to the Stanwell Mortgage Co., a letter to Stanwell Mortgage Co., listing his 1978, 1979, and 1980 income, and I did that.

Mr. HUGHES. Mr. Wright, I would like to show you a document that has been marked as exhibit 18A and ask you if you can identify that document for me?

Mr. WRIGHT. Yes, sir. This is a document that I wrote to Stanwell Mortgage Co., listing Judge Claiborne's income for the 3 years above-mentioned.

Mr. HUGHES. Do you know where a copy of this letter was maintained?

Mr. WRIGHT. In my files, sir.

Mr. HUGHES. What is the date of the letter?

Mr. WRIGHT. March 7, 1980.

Mr. HUGHES. To whom is the letter addressed?

Mr. WRIGHT. Stanwell Mortgage Co.

Mr. HUGHES. Is Stanwell Mortgage Co. identified in Judge Claiborne's memorandum to you; that is, House exhibit No. 17?

Mr. WRIGHT. No, sir.

Mr. HUGHES. Do you recall where you got that particular information?

Mr. WRIGHT. Judge Claiborne, over the telephone.

Mr. HUGHES. When you wrote this letter, what was your understanding of Judge Claiborne's fee income for 1979?

Mr. WRIGHT. I understood it to be the total of the deposits on the memorandum that he sent, which totaled $45,371.93.

Mr. HUGHES. And where did that information come from?

Mr. WRIGHT. From Judge Claiborne.

Mr. HUGHES. That is contained in the memorandum that you have testified you received?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. Mr. Wright, when was Judge Claiborne's tax return for 1979 due?

Mr. WRIGHT. April 15, 1980.

Mr. HUGHES. That is just like everybody else's tax return.

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. Was a return filed at that time?

Mr. WRIGHT. No, sir. We got an extension of time to file, sir.

Mr. HUGHES. I would like to show you a document that has been marked as House exhibit No. 20 and ask if you can identify that.

Mr. WRIGHT. Yes, sir. This is an application of automatic extension of time to file Harry Claiborne's 1979 return.

Mr. HUGHES. What is the date on that particular request for extension of time which is denominated as form 4868?

Mr. WRIGHT. April 11, 1980.

Mr. HUGHES. Mr. Wright, what information do you need to complete an application for an extension of time or a form 4868?

Mr. WRIGHT. Well, you need all the information available to you at that time relative to your total income, your total expenses, any income taxes that have been paid to that date, and what you may owe at this time if your return was filed. And you must pay that now when you file for the automatic extension.

Mr. HUGHES. So you would have to know the estimated amount of income and estimated amount of expenses?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. To prepare that return?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. Is that generally a rough calculation at that time?

Mr. WRIGHT. Yes, sir. You use the best of your ability to get it accurate, but it is an estimate.

Mr. HUGHES. I would like to show you a document that is marked as House exhibit No. 19 and ask you if you can identify that document.

Mr. WRIGHT. Yes, sir. This is a work paper that I prepared in the preparation of Judge Claiborne's automatic extension of time to file.

Mr. HUGHES. Where was that particular worksheet maintained at the time that this investigation began?

Mr. WRIGHT. In my files, sir.

The CHAIRMAN. Mr. Hughes, if you would suspend for just one moment, we have some better equipment, at least equipment that we hope will be better.

[Pause].

The CHAIRMAN. Proceed, Mr. Hughes.

Mr. HUGHES. Thank you.

Mr. Wright, what you have testified is that this is a worksheet that you used to estimate tax liability.

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. For 1979.

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. And this has been in your file.

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. Mr. Wright, what is the meaning of W-2 and 54,492 on the worksheet?

Mr. WRIGHT. A W-2 is a document issued by an employer showing your total income and withholding on your total income. This would be Judge Claiborne's judiciary salary for the year 1979.

Mr. HUGHES. Where did you get that particular information, Mr. Wright?

Mr. WRIGHT. From Judge Claiborne.

Mr. GOODMAN. Excuse me. I did not get that answer.

Mr. WRIGHT. From Judge Claiborne.

Mr. GOODMAN. Thank you.

Mr. HUGHES. Did you make any record of the receipt of the W-2 data?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. And where did you make that record?

Mr. WRIGHT. On this document, particularly, I wrote the amount of the income and withholding. And also in my diary or appointment book, I would note that I had received that.

Mr. HUGHES. So you made a record of that in a diary.

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. What was the purpose of your diary?

Mr. WRIGHT. To keep track of my time for billing purposes, and also to keep track of just time that I am spending during the day on different clients that I am working on.

Mr. HUGHES. Mr. Wright, I would like to show you House exhibit No. 35 and ask if you can identify this.

Mr. WRIGHT. Yes, sir. This is a page from my diary and time record on Saturday, April 5, 1980.

Mr. HUGHES. Whose handwriting occurs on the pages of what you have testified as your diary?

Mr. WRIGHT. This is my writing, sir.

Mr. HUGHES. What is the significance of the black marks that we see throughout those pages?

Mr. WRIGHT. That is blocking out the names of other clients that appear on this page that I have worked on during this day.

Mr. HUGHES. When was that done, Mr. Wright?

Mr. WRIGHT. Some time during the trial, the last trial of Judge Claiborne.

Mr. HUGHES. So that was done by the court?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. To protect the identity of other clients?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. Did you maintain this daily diary in the regular course of your business as a public accountant?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. Was it part of your regular business practice to maintain such a record?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. Mr. Chairman, at this time I would move the admission of House exhibit No. 35 into evidence.

Mr. GOODMAN. To which we would object, Mr. Chairman, based on the question of relevance and materiality, and in addition, I would point the Chair to the first page of proposed exhibit No. 35; it is inconsistent with the witness's testimony where he indicates that all the clients other than Harry Claiborne were crossed out. The first column would suggest that Harry Claiborne's name was crossed out.

Mr. HUGHES. Mr. Chairman, I would submit that there is nothing inconsistent. But, again, the consistency or inconsistency is for this panel to determine. I have laid a proper foundation for the admission of this record as a business record. The witness has testified that in fact he kept this record in the course of his business as a public accountant. He has identified this particular record as his record. It is in his handwriting, and it is relevant to certain entries that were pertinent to this particular case.

The CHAIRMAN. The objection will be overruled. If there are inconsistencies, counsel can illuminate them as we go through the proceedings.

[Whereupon House exhibit No. 35 is received in evidence.]

Mr. HUGHES. Mr. Wright, I wonder if you will refer to the pages of your diary. What is the record you made concerning your receipt of the W-2 data?

Mr. WRIGHT. Yes, sir. On Tuesday, April 8, 1980, I have a note I worked on Harry Claiborne's data and talked to Judy, his secretary, and got W-2 data from her and figured the approximate tax. The total time that day was 2 hours.

Mr. HUGHES. And who is Judy, Mr. Wright?

Mr. WRIGHT. Judge Claiborne's secretary.

Mr. HUGHES. So when did you receive the W-2 data, Mr. Wright?

Mr. WRIGHT. I am not sure from this. I got the data from her on the telephone on April 8, 1980.

Mr. HUGHES. Mr. Wright, what is the figure on the work sheet, exhibit 19, for Judge Claiborne's legal fee income?

Mr. WRIGHT. I am sorry. I did not catch your question, sir.

Mr. **Hughes**. I will ask you to refer back again, now, to exhibit 19.

Mr. **Wright**. All right, sir.

Mr. **Hughes**. Your work sheet, and ask you if you will examine exhibit 19 and tell the panel what Judge Claiborne's legal fee income is represented on that work sheet?

Mr. **Wright**. Yes, sir. His W-2 income was $54,499.92. His collection from prior business income was $46,371.93.

Mr. **Hughes**. So that on that particular work sheet is represented a total amount of $46,371.93 as fee income.

Mr. **Wright**. Yes, sir.

Mr. **Hughes**. For the previous year. Where did that figure come from?

Mr. **Wright**. From his original memo that he sent me. That is the figure that was changed.

Mr. **Hughes**. So you used the figure that Judge Claiborne furnished you in the previous memo.

Mr. **Wright**. Yes, sir.

Mr. **Hughes**. That is House exhibit No. 17, just for the record. So as of April 8, 1980, had your understanding of the amount of the judge's fee income for 1979 changed?

Mr. **Wright**. No, sir. I used a different figure here, but it was the same document. I just used the 46,000 rather than the 45,000 figure.

Mr. **Hughes**. So what you did was you used the 46,000 instead of the 45,000 that apparently the 46,000 was written over?

Mr. **Wright**. That is right, sir.

Mr. **Hughes**. Again, Mr. Wright, what is the date on the application for the extension of time; that is, exhibit 20?

Mr. **Wright**. April 11, 1980.

Mr. **Hughes**. Did you make a record of your work on April 11, in your daily diary?

Mr. **Wright**. Yes, sir.

Mr. **Hughes**. I wonder if you will read that to us.

Mr. **Wright**. Worked on Harry Claiborne's estimate to pay on estimate and so forth.

Mr. **Hughes**. I wonder if you will speak up as you read.

Mr. **Wright**. Yes, sir. Harry Claiborne's estimate to pay on estimate and so forth, and he was in later, one-half hour.

Mr. **Hughes**. So your diary indicates that Harry Claiborne's estimate to pay on extension is noted on there and that he was in later is on there. Is there any other notation on there that would be pertinent?

Mr. **Wright**. No, sir, just that I worked 1½ hours on it.

Mr. **Hughes**. So you indicated in your diary that you worked 1½ hours on that particular estimate?

Mr. **Wright**. Yes, sir.

Mr. **Hughes**. Mr. Wright, did you have any further occasion to use the information contained in that March 7 letter to Stanwell Mortgage Co.?

Mr. **Wright**. Yes, sir. Later, Judge Claiborne asked me to write a letter to two other financial institutions, and I did that.

Mr. HUGHES. I would like to show you what has been marked as House exhibits 18B and 18C and ask you if you can identify these particular documents.

Mr. WRIGHT. Yes, sir. They are letters that I wrote to First Western Savings and Loan and First National Bank of Nevada relative to Judge Claiborne's income for 1978, 1979, and 1980.

Mr. HUGHES. Why did you send those particular letters?

Mr. WRIGHT. Judge Claiborne asked me to.

Mr. HUGHES. What is the amount of legal fee income for 1979 as reflected in those particular letters?

Mr. WRIGHT. $45,371.93.

Mr. HUGHES. Where had that particular information come from, Mr. Wright?

Mr. WRIGHT. From Judge Claiborne's memo.

Mr. HUGHES. As of May 22, 1980, had there been any change in your understanding of Judge Claiborne's fee income for 1979?

Mr. WRIGHT. No, sir.

Mr. HUGHES. So you were still proceeding on the understanding that his legal fee income for 1979 was $45,371.93?

Mr. WRIGHT. That is right, sir.

Mr. HUGHES. Did there come a time when that particular understanding of his fee income changed?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. Can you describe how that came about?

Mr. WRIGHT. Yes, sir. Judge Claiborne called me and told me that the original list on the memo that he had sent me, the list of deposits, that in fact all those deposits or entire deposits were not in fact all fee income, and told me what the breakdown of each deposit was and what it consisted of.

Mr. HUGHES. Do you recall when that particular conversation took place?

Mr. WRIGHT. Not particularly, but it would be after May 22 and before June 10.

Mr. HUGHES. So it would be between May 22, 1980 and June 10, 1980?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. And how do you set those particular parameters, Mr. Wright?

Mr. WRIGHT. I wrote the letters on May 22 to the other financial institutions, May 22, 1980, and when I started to work on his income tax return, you know, around April 10 or so, why, we were using the deposit breakdowns that showed all of it was not fee income.

Mr. HUGHES. Do you recall where that conversation took place?

Mr. WRIGHT. It was a telephone conversation.

Mr. HUGHES. Do you have an independent recollection today of this conversation?

Mr. WRIGHT. No, sir.

Mr. HUGHES. Do you have any record of the conversation?

Mr. WRIGHT. I am not sure, sir.

[Pause].

Mr. WRIGHT. No, sir, I do not believe I do, sir.

Mr. HUGHES. I will ask you to take a look at what is House exhibit 17.

Mr. WRIGHT. Sir, this is where we are breaking down the deposits into their individual segments, but it does not tell me the day that it was done. It would be some time between May 22, 1980 and——

Mr. HUGHES. I direct your attention to the right-hand side of this particular exhibit and ask you how that information was placed on that exhibit.

Mr. WRIGHT. Judge Claiborne told me what the individual items were for each deposit, and I wrote them on the right side of the document.

Mr. HUGHES. Are those items in your handwriting?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. I see. Can you tell us what information that you find on there that you wrote on this particular exhibit, exhibit 17, that is in your handwriting?

Mr. WRIGHT. All right, sir. The first deposit on February 2, 1979, was $20,622.17. That was made up of cashing a TCD of $10,000 and the interest on it in the amount of $622.17. That made up a check of $10,622.17. And another check in the amount of $10,000 Judge Claiborne told me it was a fee. Those two checks totaled the $20,622.17.

The next deposit on April 19, 1979, was $11,000, and Judge Claiborne told me that was the sale of his airplane. On the left margin there, I made the note that the airplane cost $11,000.

On April 18, 1979, a $1,000 deposit he told me was a fee, and May 23, 1979, a deposit of $4,332.87 he told me was a fee. On May 30, 1979, a deposit of $761.16 was interest income. The August 10, 1979, deposit of $7,000 was fee income, and the November 20, 1979, deposit of $655.73 was interest income. The total was $45,371.93.

Mr. HUGHES. Now, all those entries that you have testified to is in your handwriting?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. And can you give us some approximate time when those entries were placed on that particular memorandum?

Mr. WRIGHT. Some time after May 22, 1980, and about June 10, when we were trying to complete his return.

Mr. HUGHES. And it is your information that all that information came from Judge Claiborne?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. Mr. Wright, please identify for us all the sources where you possibly could have learned that Judge Claiborne deposited the proceeds of a TCD of $10,000 plus interest?

Mr. GOODMAN. Mr. Chairman, I would object on the grounds that the question calls for speculation on the part of the witness, using the phrase "all possible places he could have gotten this information."

Mr. HUGHES. Mr. Chairman, it is not speculative. The witness can testify as to whether he had any other sources to get that particular information. It is very relevant to this particular case. And if this is within this witness's knowledge, he certainly is the best witness to testify to that.

The CHAIRMAN. The objection is overruled.

Mr. HUGHES. Mr. Wright, would you identify all of the sources where you possibly could have learned that Judge Claiborne deposited the proceeds of a TCD of $10,000 plus interest?

Mr. WRIGHT. I had no other place to get this information other than from Judge Claiborne. There was no other place I could get that.

Mr. HUGHES. Mr. Wright, what is a TCD?

Mr. WRIGHT. Time certificate of deposit.

Mr. HUGHES. A time certificate of deposit.

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. Prior to that conversation with Judge Claiborne, what information did you have concerning Judge Claiborne's airplane?

Mr. WRIGHT. I did not know he owned an airplane, sir. I had no knowledge of an airplane, sir.

Mr. HUGHES. What sources of information did you have concerning Judge Claiborne's receipt of interest income?

Mr. WRIGHT. Just what he has told me here. This is the only information I have relative to his 1979 income.

Mr. HUGHES. You would have no other way of finding that out?

Mr. WRIGHT. No, sir. Just from Judge Claiborne.

Mr. HUGHES. What sources of information did you have concerning the fee income that Judge Claiborne had received?

Mr. WRIGHT. Nothing, sir.

Mr. HUGHES. By that time, were you receiving any bank statements?

Mr. WRIGHT. No, sir.

Mr. HUGHES. Any other information from Judge Claiborne?

Mr. WRIGHT. No, sir.

Mr. HUGHES. Mr. WRIGHT, do you know the total of the items that Judge Claiborne identified as fees for 1979 in that exhibit?

Mr WRIGHT. Yes, sir.

Mr. HUGHES. And what is that total?

Mr. WRIGHT. $22,332.87. Made up of the four items.

The CHAIRMAN. Mr. Wright, would you repeat your statement?

Mr. WRIGHT. Yes, sir. It was made up of the four items he identified as fees, and they total $22,332.87.

Mr. HUGHES. After Judge Claiborne told you that certain deposits were not fees during that conversation with him——

Mr. WRIGHT. Yes, sir.

Mr. Hughes [continuing]. What, if any, additional information did he give you with respect to his 1979 legal fees?

Mr. WRIGHT. Nothing, sir.

Mr. HUGHES. He told you there were no other fees?

Mr. WRIGHT. That is right, sir. This was the total income.

Mr. HUGHES. How do you know that?

Mr. WRIGHT. That is the figure I used to prepare his return.

Mr. HUGHES. Did Judge Claiborne tell you that he received any other fee income?

Mr. WRIGHT. No, sir.

Mr. HUGHES. Mr. Wright, I would like to show you House exhibit 21 and ask if you can identify this document.

Mr. WRIGHT. Yes, sir. This is a memo from Judge Claiborne.

Mr. HUGHES. And in whose handwriting is that?

Mr. WRIGHT. It is in Judge Claiborne's writing.

Mr. HUGHES. You recognize it as Judge Claiborne's handwriting?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. Mr. Wright, do you know where the document was maintained?

Mr. WRIGHT. In my files.

Mr. HUGHES. When was the document prepared?

Mr. WRIGHT. Some time before June 10, 1980.

Mr. HUGHES. And how do you place that particular date?

Mr. WRIGHT. These were some of the figures that we were using to prepare his income tax return.

Mr. HUGHES. Is that document dated?

Mr. WRIGHT. No, sir.

Mr. HUGHES. But it is your testimony that you would have received it in connection with your preparation of that tax return in 1979?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. Who wrote the entries marked earnings?

Mr. WRIGHT. Judge Claiborne.

Mr. HUGHES. Are they in his handwriting?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. Can you read those entries to the panel, please?

Mr. WRIGHT. Yes, sir. Earnings, and underneath that, Federal judge, $54,499.92. Private law practice before judgeship, $22,332.87.

Mr. HUGHES. How does the figure for fee income on that work sheet in Judge Claiborne's handwriting compare to the notations on Judge Claiborne's earlier memorandum?

Mr. WRIGHT. They are the same, sir.

Mr. HUGHES. They are exactly the same?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. Mr. Wright, did you make a record in your diary of the work that you did in preparing the 1979 return?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. Are there entries in that diary relating to that work?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. I hand you House exhibit 35 and ask if you could identify that particular exhibit.

Mr. WRIGHT. On June 14, a Saturday, I worked on Harry Claiborne's return.

Mr. HUGHES. I wonder if you will speak up.

Mr. WRIGHT. All right, sir.

Mr. HUGHES. And refer to the entries on there that would be pertinent.

Mr. WRIGHT. That was on Saturday, June 14, I worked on Harry Claiborne's return.

Mr. HUGHES. and the other entries in your diary?

Mr. WRIGHT. On June 15, Sunday, I worked on Harry Claiborne's tax return for three hours and tried to reach Rudy to get Harry's phone number.

Mr. HUGHES. Any further entries on that particular diary?

Mr. WRIGHT. Monday, June 16, 1980, I called Harry Claiborne for more information, and I worked on his return, and later, Harry Claiborne's return and he was in later. The total time for that day was 2¾ hours.

Mr. HUGHES. What did you do on those particular dates that you have testified to, June 14, June 15, June 16, where you find entries in your diary?

Mr. WRIGHT. That is summarizing data, or accumulating data and summarizing it in the different forms of preparing to file his return.

Mr. HUGHES. So you were preparing his 1979 income tax return at that time?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. I would like to show you what has been marked as House exhibit No. 15 and ask you if you can identify that for me.

Mr. WRIGHT. Yes, sir. This is the W-2 from the Administrative Office of the U.S. Courts for Judge Harry E. Claiborne for 1979, showing his total income for $54,499.92, his withholding at $17,847.96.

Mr. HUGHES. Would you examine the balance of that particular exhibit and tell us what that represents?

Mr. WRIGHT. This is Judge Claiborne's 1979 income tax return.

Mr. HUGHES. Who prepared that particular return?

Mr. WRIGHT. I did, sir.

Mr. HUGHES. Can you identify whose signature appears on the return for us?

Mr. WRIGHT. I signed it and Judge Claiborne signed it.

Mr. HUGHES. Do you recognize his signature on the return?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. How is the legal fee income treated on that 1979 income tax return?

Mr. WRIGHT. Ordinary income and reported on his schedule C.

Mr. HUGHES. And is there a schedule C attached to the return?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. How does that number, that $22,332.87, compare to the notations that you have made on Judge Claiborne's handwritten memorandum tc you?

Mr. WRIGHT. It is the same, sir.

Mr. HUGHES. Mr. Wright, what is schedule C?

Mr. WRIGHT. It is a profit and loss from a person's personal business or profession.

Mr. HUGHES. During the years that you served as Harry Claiborne's accountant, how did you report his legal fee income?

Mr. WRIGHT. On the schedule C as ordinary income.

Mr. HUGHES. And did you do that each and every year?

Mr. WRIGHT. Yes, sir, every year.

Mr. HUGHES. So that each and every year that you prepared Harry Claiborne's tax returns, you prepared a schedule C for him?

Mr. WRIGHT. That is right, sir.

Mr. HUGHES. Mr. Wright, I would like to show you a document marked for identification purposes as House exhibit No. 36 and ask you if you have ever seen this particular document.

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. When did you first see this particular document, House exhibit 36?

Mr. WRIGHT. When Mr. Oscar Goodman and Bill Raggio came to my office and showed me the document.

Mr. HUGHES. And when was that, approximately?

Mr. WRIGHT. The latter part of 1983.

Mr. HUGHES. Had you ever seen that particular document prior to that time?

Mr. WRIGHT. No, sir.

Mr. HUGHES. What, if anything, did you do when Mr. Goodman showed it to you?

Mr. WRIGHT. He asked us if we had the document in our files, and we made an exhaustive search of all of our files relative to Judge Claiborne. We went through every sheet of paper in his entire system of files, and we could not find the document.

Mr. HUGHES. Where did you make that particular search?

Mr. WRIGHT. In my office.

Mr. HUGHES. And you searched the records pertaining to Harry Claiborne's files?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. Are these the same records where these other documents you have testified were in the files were found?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. What was the result of the search?

Mr. WRIGHT. We did not find the document.

Mr. HUGHES. Now, you refer to "we." Did you have someone help you in that search?

Mr. WRIGHT. Yes, sir, my secretary.

Mr. HUGHES. And who is your secretary?

Mr. WRIGHT. Connie Wright.

Mr. HUGHES. That is your wife?

Mr. WRIGHT. Yes, it is, sir.

Mr. HUGHES. Can you describe the nature of the search for us?

Mr. WRIGHT. It was a meticulous search. Actually, I went through every piece of paper in the files.

Mr. HUGHES. And what was the result of your search?

Mr. WRIGHT. We did not find the document.

Mr. HUGHES. Mr. Wright, did you prepare Judge Claiborne's 1980 tax return?

Mr. WRIGHT. No, sir.

Mr. HUGHES. Can you describe what, if anything, occurred with respect to the 1980 tax return and tax year?

Mr. WRIGHT. Well, early in the year of 1981, I began calling Judge Claiborne, you know, some time in February or March, in there, relative to start the preparation of filing his 1980 return. I would call his office and speak to Judy and tell her, you know, it is getting time for us to start to work on the return and for Judge Claiborne to call me.

Mr. HUGHES. And how many times, approximately, do you recall that you called?

Mr. WRIGHT. Approximately six, five or six times.

Mr. HUGHES. I see. Did you ever receive a call back?

Mr. WRIGHT. No, sir.

Mr. HUGHES. Why did you call Judge Claiborne?

Mr. WRIGHT. I expected to do his 1980 return, and I needed the information to prepare it.

Mr. HUGHES. What, if anything, did Judge Claiborne ever tell you about his 1980 tax return?

Mr. WRIGHT. At that time, nothing. The only thing I ever received relative to the 1980 return was just at the bottom of his memo that he had sent me before, wherein he listed deposits in January of $41,000.

Mr. HUGHES. So aside from the $41,000 that was on that memorandum that he sent you, you received no other information from Harry Claiborne?

Mr. WRIGHT. No, sir.

Mr. HUGHES. In fact, he never returned your telephone calls?

Mr. WRIGHT. That is right, sir.

Mr. HUGHES. Mr. Wright, how much did you charge Judge Claiborne for your services over the years?

Mr. WRIGHT. $50 a month as a retainer.

Mr. HUGHES. And what did that include?

Mr. WRIGHT. All the work that we did for him, all his write-up work, his payroll tax returns, reconciling his bank, maintaining all of his records and finally preparing his return each year.

Mr. HUGHES. What would be the total fee for all the services for a year?

Mr. WRIGHT. $600.

Mr. HUGHES. How much did you charge Judge Claiborne after he took the bench?

Mr. WRIGHT. Nothing.

Mr. HUGHES. Mr. Wright, as you sit here today, what are your feelings about Judge Claiborne?

Mr. WRIGHT. I am very sad. I am sorry Judge Claiborne has a problem. Just very sad.

Mr. HUGHES. Thank you.

Mr. Chairman, I have no further questions.

The CHAIRMAN. Mr. Goodman?

Mr. GOODMAN. Mr. Chairman, may we have the committee's indulgence for several minutes so I can consult my client?

The CHAIRMAN. Yes. [Pause].

Mr. GOODMAN. May we approach the Chair?

The CHAIRMAN. Mr. Goodman has requested permission to approach the Chair. Do counsel from the House want to accompany him? The photographers will make room.

[Pause].

The CHAIRMAN. Mr. Wright, I have questions in writing propounded by the Senator from Alabama, Mr. Heflin.

Did you raise with Judge Claiborne whether you should notify the three mortgage companies—the Stanwell Mortgage Co., the First Western Savings & Loan Association, and the First National Bank of Nevada—of the change of earnings for 1979 from the prior private practice of law as a result of the ensuing discoveries or information that you had received on that subject?

Mr. WRIGHT. No, sir, I did not.

The CHAIRMAN. A further question from the Senator from Alabama: Would you explain the deductions on schedule C of the 1979 return, a repair and maintenance item of $285, and supplies $400?

Mr. WRIGHT. Yes, sir. Those were final items that were sent to Judge Claiborne but not billed to him in 1978 and was actually billed in 1979, and therefore a deductible item against his income for 1979. So we took it as a deduction.

The CHAIRMAN. I have a question which I would like you to answer, if you are able to do so.

On House exhibit 36, which is the letter which purports to be from Judge Claiborne to you, dated the April 11, 1980——

Mr. WRIGHT. Yes, sir.

The CHAIRMAN [continuing]. There is a notation at the top of the page, 11/83, first shown to him.

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. Do you know what that notation is about?

Mr. WRIGHT. I assume it means it was first shown at the meeting. I do not have any idea what it would be other than that.

The CHAIRMAN. Are there any other questions in writing?

Senator PRYOR. What was his answer, Mr. Chairman?

The CHAIRMAN. He says he assumes that that means first shown to him.

On exhibit No. 17, which is the letter addressed to you from Judge Claiborne with reference to his application for a mortgage, the letter from Judge Claiborne refers to a mortgage "at this place."

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. Did you understand what "this place" referred to?

Mr. WRIGHT. I understood he was trying to buy a new home, but I really had no information about it, no, sir.

The CHAIRMAN. Was there any additional documentation with that?

Mr. WRIGHT. No, sir.

The CHAIRMAN. If there are no further questions, the Committee will stand in recess until the hour of 2 o'clock. We will meet back in this room. The committee will have a brief conference before we resume the examination of Mr. Wright.

[Luncheon recess taken at 11:46 a.m.]

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order. It is 2:20 p.m.

Mr. Wright, come to the chair.

Mr. Goodman, are you prepared to proceed with cross-examination?

Mr. GOODMAN. I am, Mr. Chairman.

The CHAIRMAN. Mr. Wright, I would remind you that you are testifying under oath and that the oath you took this morning, of course, is still in effect this afternoon.

CROSS-EXAMINATION

Mr. GOODMAN. Mr. Wright, I am Oscar Goodman, and we know each other, do we not?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. Mr. Wright, you practice public accountancy in Las Vegas, NV?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. Did you have to take any board exam whatsoever in order to be able to engage in such a practice?

Mr. WRIGHT. No, sir.

Mr. GOODMAN. In other words, you just set up shop and hang out your shingle, so to speak, and do the work of a public account; is that right?

Mr. WRIGHT. That is right, sir.

Mr. GOODMAN. Did you have any special tests or go through any type of procedures as far as belonging to the State board and the National Board of Accountancy?

Mr. WRIGHT. No, sir.

Mr. GOODMAN. So basically it's just starting up and holding yourself out for the public as an account; is that right?

Mr. WRIGHT. I am allowed to practice for the treasury, and you do have to take an examination for that, which I did.

Mr. GOODMAN. All right. But as far as being a public accountant, it's just a matter of holding yourself out for the public and saying, "I am a public accountant"?

Mr. WRIGHT. That is right, sir.

Mr. GOODMAN. And, of course, the qualifications of public accountants differ from person to person, do they not?

Mr. WRIGHT. From person to person, yes.

Mr. GOODMAN. Now you know Harry Claiborne, do you not?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. And you see him, of course, at this proceeding?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. You have known Harry Claiborne for how many years?

Mr. WRIGHT. Thirty-five years.

Mr. GOODMAN. And how many years did you handle his tax matters?

Mr. WRIGHT. Thirty years.

Mr. GOODMAN. And during that period of time, is it not a fact that he gave you certain very definitive instructions about how to treat his tax returns?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. And would it be fair to state that he had told you that you should never deliberately mislead the Government concerning his returns?

Mr. WRIGHT. That is right, sir.

Mr. GOODMAN. And he told you that every benefit of doubt should be given to the Government when you prepared his returns, did he not?

Mr. WRIGHT. That is right, sir.

Mr. GOODMAN. And if there was ever a question about the amount of moneys that should be reported, the judge always advised you that it should be resolved in the Government's favor; is that right?

Mr. WRIGHT. That was our understanding; yes, sir.

Mr. GOODMAN. All right. And that was true not only while he was a lawyer but also after he took the bench in September 1978?

Mr. WRIGHT. No, that understanding did not change, sir.

Mr. GOODMAN. All right. And it remained constant and continuous until he no longer desired your services?

Mr. WRIGHT. That is right, sir.

Mr. GOODMAN. Now would it be fair to say, Mr. Wright, that you have no independent recollection of dates that you testified to today?

Mr. WRIGHT. Basically, I would say that's right, sir.

Mr. GOODMAN. And would it be fair to state, Mr. Wright, that you have no independent recollection of various conversations of which you have testified today?

Mr. WRIGHT. Basically, I would say that is correct.

Mr. GOODMAN. Would it also be fair to say, Mr. Wright, that you have spent many, many hours in anticipation of testifying both in court proceedings as well as in this Senate impeachment trial?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. And you spent many of these hours going over your testimony in the company of Federal agents, did you not?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. You spent approximately 100 hours, did you not, in anticipation of testifying just with the court trial in and of itself?

Mr. WRIGHT. No. The 100 hours, I testified before, was the total hours that we had spent, you know, traveling with the defense and the prosecution.

Mr. GOODMAN. Well, of the 100 hours that you spent in anticipation of testifying on the prior occasions, isn't it a fact that only perhaps two of those hours were spent with gentlemen who were representing the defense?

Mr. WRIGHT. I can't specifically remember the number of hours, but it's normal compared to the prosecution; I would have to say that's a fair statement.

Mr. GOODMAN. Now when you were preparing your testimony or having it prepared for the prosecution, was it with any particular representatives of the government that you were spending your time?

Mr. WRIGHT. Over the period of time several different agents.

Mr. GOODMAN. All right. Were they representatives of the Federal Bureau of Investigation who were asking you questions about Judge Claiborne's tax matters?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. And would that be a Mr. Richard Gessinger, in particular?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. Was it unusual, in your experience as a tax preparer and as a public account, to be questioned by the FBI as it related to a taxpayer's taxes?

Mr. WRIGHT. That's right, sir.

Mr. GOODMAN. And you also underwent questioning by Donald Skelton, did you not, a representative of the Internal Revenue Service?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. And did you also undergo questioning by a Leo Halper, a representative of the Internal Revenue Service?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. All right. Do you recall generally that on April 11, 1980 you had the occasion to do work on behalf of Judge Claiborne?

Mr. WRIGHT. I believe we were preparing an estimate—I am sorry; what was that date, sir?

Mr. GOODMAN. April 11.

Mr. WRIGHT. April 11——

Mr. GOODMAN. 1980.

Mr. WRIGHT. Yes, sir. We were preparing his estimate—extension.

Mr. GOODMAN. Now you said "estimate extension." Those are two different documents.

Mr. WRIGHT. I understand that. We were preparing for his extension.

Mr. GOODMAN. All right. Then an extension would be for the tax year of 1979?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. And in order to prepare an extension properly, you have to have certain information available to you, do you not?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. And a part of that information would be the moneys estimated to be earned for the particular year?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. And in order to do a good job there, you would require the W-2 form, would you not?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. And what is a W-2 form?

Mr. WRIGHT. That shows an employee's earnings from his employer.

Mr. GOODMAN. But in the case of Harry Claiborne in 1979 and 1980 for the 1979 extension, it would have been the W-2 provided by the Federal court indicating what his salary was?

Mr. WRIGHT. That is right, sir.

Mr. GOODMAN. All right. Also, when you are preparing the extension, you have to send a check in with it, do you not?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. And what does the check represent?

Mr. WRIGHT. The balance that you think is due and owing when you file your return.

Mr. GOODMAN. All right. And as the public accountant who prepares the document, do you tell the taxpayer how much he is supposed to send in?

Mr. WRIGHT. We determine what we think the total tax is. We discuss that with the taxpayer, and he decides how much he is going to send in.

Mr. GOODMAN. Well, do you discuss with the taxpayer or do you tell him that he needs a check for such-and-such amount?

Mr. WRIGHT. We discuss it with the taxpayer.

Mr. Goodman Do you do that in person or telephonic?

Mr. WRIGHT. Both.

Mr. GOODMAN. All right. Now, on April 11, 1980, you received certain information from Judge Claiborne, did you not?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. You received a W-2.

Mr. GOODMAN. Who else?

Mr. WRIGHT. Don Skelton, I believe, was one of the first; possibly Leo Halper.

Mr. GOODMAN. Don Skelton of the IRS and possibly Leo Halper?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. And these gentlemen would come to your office, would they not?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. Where was your office located?

Mr. WRIGHT. At the Atrium Building, 333 Rancho Drive, Suite 888, Las Vegas, NV.

Mr. GOODMAN. And how long had you been in that office in the beginning of 1983?

Mr. WRIGHT. Since September 17, 1981.

Mr. GOODMAN. Where did you office prior to moving over to the Atrium Building?

Mr. WRIGHT. 1209 South Commerce Street, Las Vegas, NV.

Mr. GOODMAN. And you moved in 1981, did you not?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. To the Atrium?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. And during that move you transported documents, didn't you?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. Files?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. Client material?

Mr. WRIGHT. All types; yes, sir.

Mr. GOODMAN. OK. And during that move, it is not a fact that you lost material?

Mr. WRIGHT. No, sir, I don't believe so at this time.

Mr. GOODMAN. Is it not a fact that you had misplaced material?

Mr. WRIGHT. No, sir.

Mr. GOODMAN. All right. Do you recall that during the move you threw away certain papers?

Mr. WRIGHT. We did destroy papers that were no longer needed—obsolete and older records, yes, sir.

Mr. GOODMAN. And that was during the move in 1981; is that correct?

Mr. WRIGHT. That's right, sir.

Mr. GOODMAN. All right. And who was responsible for throwing away papers in 1981?

Mr. WRIGHT. Myself, sir.

Mr. GOODMAN. Anybody else?

Mr. WRIGHT. Possibly my secretary, who would have charge of some of the detail order records.

Mr. GOODMAN. Your secretary is your wife?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. Connie Wright?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. How many other employees participated in the moving process?

Mr. WRIGHT. All the employees helped move.

Mr. GOODMAN. All right. And how many employees did you have at the time of the move in 1981?

Mr. WRIGHT. Five.

Mr. GOODMAN. Five?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. Who were they?

Mr. WRIGHT. Ken Swanson——

Mr. GOODMAN. Ken Swanson.

Mr. WRIGHT. Jesse Harrison—or Harris; I'm sorry.

Mr. GOODMAN. You have to speak up, sir.

Mr. WRIGHT. Jesse Harris. My wife, of course, Connie Wright. And another lady—I can't recall her name right this minute.

Mr. GOODMAN. All right. When you threw away the papers, did you incinerate them?

Mr. WRIGHT. No, sir. We'd tear them up.

Mr. GOODMAN. You shredded them?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. In a shredder?

Mr. WRIGHT. No, sir.

Mr. GOODMAN. What, just physically—just manually?

Mr. WRIGHT. Physically.

Mr. GOODMAN. All right. And you say you and your wife were the only two persons who did that?

Mr. WRIGHT. Basically, yes, sir.

Mr. GOODMAN. When you say "basically," what does that mean? Isn't it a fact, Mr. Wright, that there were other persons who actually participated during the moving process and the destruction of documents in 1981?

Mr. WRIGHT. Under our direction, we would tell them, "Tear this paper up." Yes, sir.

Mr. GOODMAN. In other words, when they were moving, you would say, "We don't need this anymore; tear it up and throw it away"?

Mr. WRIGHT. That is right, sir.

Mr. GOODMAN. OK. And, of course, you don't know every single paper that was torn up, do you, personally?

Mr. WRIGHT. Not every paper, no, sir.

Mr. GOODMAN. All right. And at the time that this tearing up and the destruction of the material took place, that was at some time after the April 11, 1980, letter; isn't that right?

Mr. WRIGHT. That is right, sir.

Mr. GOODMAN. Now in anticipation of testifying at the court trial, did you provide two representatives of the Internal Revenue Service and the FBI access to your office for purposes of examining documents?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. All right. When did that take place the first time, to the best of your recollection?

Mr. WRIGHT. Sometime in 1983, but I can't recall when.

Mr. GOODMAN. Did these governmental representatives come to you and say, "Mr. Wright, we would like very much to see whatever files you have on Harry Claiborne?

Mr. WRIGHT. Yes, sir.

Mr. **Goodman**. And, of course, you were concerned that such an investigation was taking place, were you not?

Mr. **Wright**. Yes, sir.

Mr. **Goodman**. You were concerned not only for a client or a former client, Harry Claiborne, but you were also concerned for Jay Wright, weren't you?

Mr. **Wright**. Yes, that's right, sir.

Mr. **Goodman**. Is that correct?

Mr. **Wright**. That is right, sir.

Mr. **Goodman**. Because you felt you may have done something that may cause a problem for you or your clients, as far as the preparation of tax returns?

Mr. **Wright**. Certainly.

Mr. **Goodman**. So you wanted to be very cooperative with these Government agents who came into your premises is that right?

Mr. **Wright**. I had nothing to hide. Yes, sir.

Mr. **Goodman**. And you said to them, "Here are the files that you want"?

Mr. **Wright**. My wife made those files, under my direction, of course, and she went with Mr. Skelton, and they went through the files.

Mr. **Goodman**. All right. Were you present at all times when Mr. Skelton was going through the files?

Mr. **Wright**. No, sir.

Mr. **Goodman**. Were you present at all times when Mr. Gessinger was going through the files?

Mr. **Wright**. I don't recall Mr. Gessinger going through the files.

Mr. **Goodman**. When Mr. Skelton was going through the files prior to that time, did you inventory the files?

Mr. **Wright**. No, sir.

Mr. **Goodman**. So in other words, you handed him a grouping of papers and said, "Here they are. Do with them what you will, and I will see you when you leave"?

Mr. **Wright**. My wife was with them, yes, sir.

Mr. **Goodman**. OK. But you left?

Mr. **Wright**. Yes, sir.

Mr. **Goodman**. Was your wife with them at all times?

Mr. **Wright**. Yes, to my knowledge.

Mr. **Goodman**. Do you know whether or not she was with them at all times?

Mr. **Wright**. No, sir.

Mr. **Goodman**. Do you know whether or not they asked for any papers to be copied, which were in your office?

Mr. **Wright**. They did, sir.

Mr. **Goodman**. Do you know whether they took any originals with them?

Mr. **Wright**. They should not have, sir.

Mr. **Goodman**. No, I didn't ask that question, Mr. Wright.

Do you know whether or not they took any originals——

Mr. **Wright**. I do not know that, sir.

Mr. **Goodman**. How many times were these agents at your office reviewing the material there?

Mr. **Wright**. As I recall, once when they reviewed material like that in the files. Other than that, it would just be when they would be there and ask me to jointly view a file or a letter or something with them.

Mr. **Goodman**. In other words, they would go over a specific document with you after they had copied the file or taken whatever they needed with them?

Mr. **Wright**. Yes, sir.

Mr. **Goodman**. And how many times would they go over these items with you before you testified for the first time in the trial in Reno?

Mr. **Wright**. I can't remember specifically. Several times.

Mr. **Goodman**. More than 10?

Mr. **Wright**. I would say no.

Mr. **Goodman**. Did they work with you before you testified at the trial in Reno?

Mr. **Wright**. Yes, sir.

Mr. **Goodman**. They had you in a room and they went over your testimony?

Mr. **Wright**. Yes, sir.

Mr. **Goodman**. And they worked with you between the first trial and the second trial——

Mr. **Wright**. Yes, sir.

Mr. **Goodman** [continuing]. Did they not?

Mr. **Wright**. Yes, sir.

Mr. **Goodman**. And they worked with you at great length before your testimony during the second trial, did they not?

Mr. **Wright**. Yes, sir.

Mr. **Goodman**. And they went over items which they believed were relevant and pertinent as far as their prosecution interests were concerned, didn't they?

Mr. **Wright**. Of course.

Mr. **Goodman**. And you didn't have an independent recollection of many of the events which they were discussing with you prior to your testimony at the trial, did you?

Mr. **Wright**. That's right, sir.

Mr. **Goodman**. When do you first feel that your memory faded to a point where you weren't able to recall specifics of conversations about—or places of conversations and the like?

Mr. **Chabraja**. Mr. Chairman, if I may object. The question is vague and borders on unintelligible. I don't know what "and the like means," and I don't think the witness does, either. It is also compound.

Mr. **Goodman**. May I rephrase it?

The **Chairman**. Perhaps you can rephrase it, Mr. Goodman.

Mr. **Goodman**. Thank you, Mr. Chairman.

When is the first time, Mr. Wright, that you believed you had a problem in recalling events?

Mr. **Wright**. Well, anytime you ask when that certain date or when a certain event happens, I have trouble remembering exactly when it is. And I do use documents and notes and references to refresh my memory, and that's what we did during this preparation for the trial.

Mr. **Goodman**. Would it be a fair statement, Mr. Wright, that you did not have an independent recollection of many of the areas where you were questioned?

Mr. WRIGHT. That is right, sir.

Mr. GOODMAN. Would it be a fair statement to say that at the time of the questioning, you were provided with certain documents to attempt to reconstruct a particular event?

Mr. WRIGHT. That's right, sir.

Mr. GOODMAN. And basically what you were doing, in large part, was relying on your common sense as to what must have happened rather than remembering what, in fact, did happen?

Mr. WRIGHT. That is right, sir.

Mr. GOODMAN. And were there times during the course of your preparation that suggestions were made to you by Mr. Skelton as to what must have happened concerning a particular transaction?

Mr. WRIGHT. Well, of course, that's what we're all—we are all trying to determine what happened from whatever source we have available to us.

Mr. GOODMAN. And one of those sources, as far as determining what happened concerning Harry Claiborne and the preparation of his returns was what the representative of the Internal Revenue Service was telling his opinion was?

Mr. WRIGHT. Of course, they're my documents—or Harry Claiborne's documents that are in my files, and we are jointly going over the documents.

Mr. GOODMAN. When you say "jointly," you're talking about Mr. Skelton, the IRS representative, and yourself were jointly going over the documents?

Mr. WRIGHT. That is right, sir.

Mr. GOODMAN. And you were telling him, "Well, I really don't recall exactly what happened here"; isn't that right?

Mr. WRIGHT. That is right, sir.

Mr. GOODMAN. And he would say to you on occasion, would he not, Mr. Wright—well, doesn't it make sense that this happened and that's the reason that you did something regarding the judge's returns?

Mr. WRIGHT. I am sure that is right, sir.

Mr. GOODMAN. All right. And you relied on that, did you not?

Mr. WRIGHT. Well, if it made sense to me, naturally.

Mr. GOODMAN. All right. So in large part, you were at the time of testifying during your first court trial, relying on this amalgam or conglomerate of information when you were giving answers as to what happened in specific fact situations; is that right?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. And part of that input was based on common sense rather than on recall; isn't that right?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. And much of the common sense aspect of it was provided to you by the IRS agent?

Mr. WRIGHT. Well, I would say that they certainly had their input.

Mr. GOODMAN. I would like to call your attention to the date of April 11, 1980 and ask you whether or not you recall anything in particular that happened on that day regarding Judge Claiborne.

Mr. WRIGHT. Not specifically, sir.

Mr. Goodman. And these folks went over the tax returns of Judge Claiborne with you, did they not?

Mr. Wright. Yes, sir.

Mr. Goodman. And they asked you questions, and you gave them answers?

Mr. Wright. Yes, sir.

Mr. Goodman. And these answers were reduced to writing before you testified in court, were they not?

Mr. Wright. Yes, sir.

Mr. Goodman. All right. Now, you indicated that there was a point in time that you were shown the letter of April 11, 1980, which is exhibit No. 36 in the house manager's exhibit folder; is that correct?

Mr. Wright. Yes, sir.

Mr. Goodman. Do you have that folder in front of you?

Mr. Wright. No, sir.

Mr. Goodman. Mr. Chairman, may I have a folder for the witness, please.

The Chairman. The house managers, I think, have the folder.

Mr. Goodman. May I approach the witness?

The Chairman. Yes, certainly.

Mr. Goodman. No. 36, Mr. Wright, is the last document which is contained in the folder and is the letter of April 11, 1980.

Mr. Wright. Yes, sir.

Mr. Goodman. Now at the top of the letter, there appears to be a notation 11-83 first shown to him with sort of a squiggle and what would resemble a delta; is that correct?

Mr. Wright. Yes, sir.

Mr. Goodman. All right. Do you know who placed that on the document?

Mr. Wright. No, sir.

Mr. Goodman. Did you place it on the document?

Mr. Wright. No, sir.

Mr. Goodman. Would it refresh your recollection as to when this document was shown to you by myself?

Mr. Wright. The first time I saw this document, to my knowledge, was when you showed it to me. Yes, sir.

Mr. Goodman. Now that was November 1983?

Mr. Wright. Approximately, sir.

Mr. Goodman. Did you provide that information to the investigating authorities?

Mr. Wright. That you had showed it to me?

Mr. Goodman. Yes.

Mr. Wright. Yes, sir.

Mr. Goodman. And did the investigating authorities question you before November 1983?

Mr. Wright. For 1983? Yes, sir.

Mr. Goodman. All right. When did they first start to question you?

Mr. Wright. Early on in 1983.

Mr. Goodman. Who started to question you early on in 1983?

Mr. Wright. I would say possibly Gessinger and——

Mr. Goodman. That's Richard Gessinger of the FBI?

Mr. Wright. Yes, sir.

Mr. WRIGHT. Yes, sir.

Mr. Goodman And you received a check, right?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. And the check was in the amount of $8,000?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. And it was made payable to the Internal Revenue Service.

Mr. WRIGHT. That is right, sir

Mr. GOODMAN. Do you recall how you received the check?

Mr. WRIGHT. No, sir. It was sent to my office.

Mr. GOODMAN. It was sent to your office by whom?

Mr. WRIGHT. I am not sure. Judge Claiborne had to send it, but I am not sure who actually brought it.

Mr. GOODMAN. So in other words, somebody acting as an agent for Judge Claiborne on April 11, 1980, had to have delivered physically to your office at least the check in the amount of $8,000?

Mr. WRIGHT. That is right, sir.

Mr. GOODMAN. And could have also delivered at that point in time the W-2?

Mr. WRIGHT. That is right, sir.

Mr. GOODMAN. Do you recall ever receiving the W-2 at a time that you did not have a check within your possession?

Mr. WRIGHT. No, sir.

Mr. GOODMAN. So a fair inference would be that you got them both at the same time?

Mr. Wright I would think so, sir.

Mr. GOODMAN. OK. And if I asked you whether you got them both at the same time, would you tell us yes?

Mr. WRIGHT. I do not know.

Mr. GOODMAN. All right. If Mr. Skelton suggested to you that you got them at the same time, would you say yes?

Mr. WRIGHT. No.

Mr. GOODMAN. When you prepared the extension, which is exhibit No. 20, if you would refer to that. Mr. Chairman, with the Chair's permission, I will refer to the exhibits with the House number. Thank you.

Do you see that document, Mr. Wright?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. Did you sign that document?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. There is a space, is there not, for signature of verification if prepared by the taxpayer?

Mr. WRIGHT. That is right, sir.

Mr. GOODMAN. In this particular instance, you are the one who prepared it?

Mr. WRIGHT. That is right.

Mr. GOODMAN. And you also forwarded that document, did you not, on April 11 to the Internal Revenue Service?

Mr. Wright Yes, sir

Mr. GOODMAN. With the W-2?

Mr. WRIGHT. Not the W-2, no, sir.

Mr. GOODMAN. The W-2 was not included with it?

Mr. WRIGHT. No.

Mr. GOODMAN. All right. With a check for $8,000?

Mr. WRIGHT. That is right, sir.

Mr. GOODMAN. All right. And do you recall Judy Ahlstrom being at your office on that day?

Mr. WRIGHT. No, sir.

Mr. GOODMAN. Do you know who Judy Ahlstrom is?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. Who is Judy Ahlstrom?

Mr. WRIGHT. Judge Claiborne's secretary.

Mr. GOODMAN. All right. Are you telling the honorable committee that Judy Ahlstrom was not there that day?

Mr. WRIGHT. No, sir. I am saying I did not see her.

Mr. GOODMAN. You do not know whether she was there or not?

Mr. WRIGHT. That is right, sir.

Mr. GOODMAN. All right. And did you see Judge Claiborne that day?

Mr. WRIGHT. Later in the day.

Mr. GOODMAN. That was on April 11, 1980?

Mr. WRIGHT. I think he brought a check for $2,500 later in the day.

Mr. GOODMAN. Do you have an independent recollection of that?

Mr. WRIGHT. No, sir.

Mr. GOODMAN. Was this something that you reconstructed after discussing it with Mr. Skelton?

Mr. WRIGHT. No, sir. I think it was in my diary that I made a note that he brought the check by later.

Mr. GOODMAN. All right Did you make any note whatsoever in your diary as to who brought by the $8,000 check which accompanied the request for automatic extension?

Mr. WRIGHT. I do not recall that specifically, sir.

Mr. GOODMAN. But we do know for a fact that it did arrive there on April 11, 1980?

Mr. WRIGHT. That is right, sir.

Mr. GOODMAN. Did you have a policy, Mr. Wright, to, for good cause given by your client, have the client sign a tax return in blank?

Mr. WRIGHT. Not in these later years. In prior years, that used to be a common practice.

Mr. GOODMAN. I am asking, as far as you are concerned, did you follow a policy, let us say, in 1978, for example, of having a taxpayer who was out of town—and I will give you a hypothetical that Judge Claiborne was assigned to try a case in Richland, WA, in 1979 at the time his 1978 return was due. Do you recall whether or not you had him sign a blank return at that time?

Mr. WRIGHT. No, sir.

Mr. GOODMAN. Now, does that mean he did not sign it or does it mean that you do not recall?

Mr. WRIGHT. I do not recall.

Mr. GOODMAN. Do you recall receiving a letter from Judge Claiborne in 1979 regarding the 1978 return where Judge Claiborne advised you that he would be in Richland, WA, and he enclosed a signed blank tax return for the year 1978?

Mr. WRIGHT. I seem to recall that. That does not mean, of course, that we used the signed return.

Mr. GOODMAN. All right. In other words, if Judge Claiborne had signed a blank return and he was out of town, it may have been utilized by yourself; is that right?

Mr. WRIGHT. No, sir, I doubt that.

Mr. GOODMAN. Well, when is the last time, Mr. Wright, that you filed a return that the taxpayer had signed in blank?

Mr. WRIGHT. Several years ago, but I cannot have any specific recollection of that, sir.

Mr. GOODMAN. Well, was it three years ago?

Mr. WRIGHT. No, much longer than that.

Mr. GOODMAN. Five years ago?

Mr. WRIGHT. Longer than that. It would have to be 8 to 10 years ago.

Mr. GOODMAN. Well, eight years ago would be 1978, would it not?

Mr. WRIGHT. It was before that; whatever time the Internal Revenue finally told us we would not follow that procedure any more, that is when I stopped.

Mr. GOODMAN. Well, you were a little concerned about the fact that you had your client sign returns in blank, were you not?

Mr. WRIGHT. Absolutely.

Mr. GOODMAN. Even though you look at yourself as an ethical tax preparer, right?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. Nevertheless, you were fearful that that fact would be brought to the attention of Mr. Skelton or Mr. Gessinger when they were by there really combing through your procedures, were you not?

Mr. WRIGHT. I cannot recall that I was concerned about that, sir.

Mr. GOODMAN. Well, you indicated that you did not feel comfortable with that practice.

Mr. WRIGHT. I certainly was not.

Mr. GOODMAN. And you realized that certain sanctions could be brought against you if in fact you violated the Internal Revenue Code, do you not?

Mr. WRIGHT. Of course.

Mr. CHABRAJA. Your Honor, may I interpose an objection? I think that counsel should be given fair latitude in cross-examination, but he should not misstate the witness's prior testimony in questions that he puts to him. He is asking him questions that he has not previously testified on today.

Mr. GOODMAN. These are impeachment questions.

Mr. CHABRAJA. If they are impeachment questions, Mr. Chairman, impeachment should be conducted in the proper and traditional manner by advising the Chair and opposing counsel of the page and line number and the question and answer read for the witness and asked if he made that statement on a prior occasion. That is the way it is to be done.

Mr. GOODMAN. With all due respect to my colleague, that may be one approach if you have a prior transcript which has an inconsistent statement on it, but certainly impeachment questioning is appropriate, with all due respect, of the witness to show his bias, his mental state, his fear, without the use of some prior document that you are utilizing to challenge his credibility on.

The CHAIRMAN. Mr. Goodman, we cannot let this go too far afield, but for the moment, I am going to overrule the objection.

Mr. GOODMAN. Thank you.

When the authorities came in to see you, Mr. Wright—that would be Mr. Skelton and Mr. Gessinger—you, of course, wanted to cooperate?

Mr. WRIGHT. Of course.

Mr. GOODMAN. And one of the reasons you wanted to cooperate with them was that you did not want to cause yourself any problems; is that not right?

Mr. WRIGHT. Naturally, I do not want any problems for myself.

Mr. GOODMAN. Now, much time was spent in your direct examination this morning concerning various figures which were placed on documents concerning the income from the private law practice of Judge Claiborne earned before going on the bench. Do you recall those questions?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. And there appear to be various entries by yourself and Judge Claiborne with particular figures on them; is that not right?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. And one of the documents is exhibit No. 21, is it not?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. And that document is in Judge Claiborne's handwriting, correct?

Mr. WRIGHT. All except the last couple figures.

Mr. GOODMAN. Which figures would those be?

Mr. WRIGHT. Where I am transferring paid for the airplane $11,500 in the middle of the page, I have transferred that to the right side of the page, and subtracted that from the $11,000 on the sale, and I wrote personal loss, $500.

Mr. GOODMAN. So with the exception of the words "personal loss $500," all the writing on this document was Judge Claiborne's?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. Do you have any specific recollection concerning how that information got on that piece of paper?

Mr. WRIGHT. Judge Claiborne sent it to me.

Mr. GOODMAN. Excuse me?

Mr. WRIGHT. Judge Claiborne sent it to me.

Mr. GOODMAN. Do you know where he got that information?

Mr. WRIGHT. No, sir.

Mr. GOODMAN. All right.

Mr. WRIGHT. I either got it or he wrote it down himself when we documented a prior document that he sent to me.

Mr. GOODMAN. OK. Now, you indicated to this committee that you either got it or he got it himself; is that right?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. And at this point in time, you do not know where it came from, do you?

Mr. WRIGHT. That is right, sir.

Mr. GOODMAN. And when you testified this morning, basically you were testifying as to how Mr. Skelton felt it took place; is that not right?

Mr. Wright. No, sir.

Mr. Goodman. Well, you were guessing, then?

Mr. Wright. I do not understand you.

Mr. Goodman. You do not have any personal knowledge as to how that figure was arrived at, do you?

Mr. Wright. This figure was arrived at when Judge Claiborne and myself went over a prior memo that he sent to me.

Mr. Goodman. When you say you went over it, are you saying that you went over it in person or on the phone?

Mr. Wright. On the telephone, sir.

Mr. Goodman. Do you recall that?

Mr. Wright. Yes, sir. That is the only way that—I did not have a personal conversation with him on that document. It was on——

Mr. Goodman. When you say you did not have a personal conversation, are you saying——

Mr. Wright. In person.

Mr. Goodman [continuing]. You did not meet with him face to face regarding it?

Mr. Wright. That is right, sir.

Mr. Goodman. You are claiming that the figure was arrived at as a result of some telephonic conversation?

Mr. Wright. That is right, sir.

Mr. Goodman. Now, ordinarily, you did not speak with Judge Claiborne about his tax matters, did you?

Mr. Wright. Yes, I did speak to him about it.

Mr. Goodman. Well, is it not a fact, Mr. Wright, that you would contact his employees and you would get information from his employees regarding his tax situation?

Mr. Wright. We would get detailed information. We got monthly detailed information. At the end of the year, when we are working on his tax return, we always had a conversation with Judge Claiborne before that was finally put together.

Mr. Goodman. Is it not a fact, Mr. Wright, that when you were preparing his tax returns that you got the information from his office staff?

Mr. Wright. Not all of it, no, sir.

Mr. Goodman. Well, not all of it but a large part of it?

Mr. Wright. Of course. Every month we would get information from him, from his staff.

Mr. Goodman. All right. And that would be from when he was in private practice from Jenny McIlwaine; is that right?

Mr. Wright. She was one of his secretaries, yes, sir.

Mr. Goodman. And you did not get the information from her, did you?

Mr. Wright. I would pick the stuff up, normally. Most of the time, I would pick the detailed records up from their office. Once in a great while, they would send it. Either Jenny would bring it or a runner would bring it down.

Basically, it was our practice I picked the stuff up and took it back to Judge Claiborne.

Mr. Goodman. Well, did you take it back to Judge Claiborne or take it to your office?

Mr. Wright. To his office, you mean?

Mr. Goodman. You picked it up from Judge Claiborne?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. And you took it to your office?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. You did not take it to his office?

Mr. WRIGHT. No, sir.

Mr. GOODMAN. All right. And at the time you took it to your office, you gave it to somebody, did you not?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. You did not work on it, did you?

Mr. WRIGHT. Some of it, yes, sir, but mainly the detailed work was done by a secretary or another accountant.

Mr. GOODMAN. It was done by Connie Wright, was it not?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. And there were times when a gentleman by the name of Ken Swanson worked on the return, is that right?

Mr. WRIGHT. And others, yes, sir.

Mr. GOODMAN. And Ken Swanson is whom?

Mr. WRIGHT. He was an employee of mine at that time.

Mr. GOODMAN. What time are we talking about?

Mr. WRIGHT. I cannot remember when he came to work for me, but I would say 1978, 1977, 1978 through 1981.

Mr. GOODMAN. He was working for you, was he not, in 1980?

Mr WRIGHT. Yes, sir.

Mr. GOODMAN. And it was his responsibility to help in the preparation of returns, was it not?

Mr. WRIGHT. That is right, sir.

Mr. GOODMAN. And he worked on Judge Claiborne's return, did he not?

Mr. WRIGHT. A little bit.

Mr. GOODMAN. Did he also work on the return of a woman by the name of Annette Quintana, spelled Q-u-i-n-t-a-n-a?

Mr. WRIGHT. I believe he did, sir.

Mr. GOODMAN. And he shared the information that he received from Annette Quintana with you, did he not?

Mr. WRIGHT. No, sir.

Mr. GOODMAN. Do you know whether or not he was advised by Annette Quintana that she was making payments in thousand dollar increments to Judge Claiborne?

Mr. WRIGHT. No, sir.

Mr. GOODMAN. Do you know whether or not Mr. Swanson had a policy of parallel checking the returns of two clients in the office?

Mr. WRIGHT. No, sir.

Mr. GOODMAN. Are you telling us that he did not do that?

Mr. WRIGHT. He did not, to my knowledge.

Mr. GOODMAN. You do not know whether or not Ken Swanson would get information from Annette Quintana where hypothetically she said to him, "I have given Judge Claiborne $5,000 in five $1,000 cashier checks," whether or not that would be picked up on Judge Claiborne's return?

Mr. CHABRAJA. Your Honor, may I interpose an objection before the witness answers? The question is designed to elicit pure hearsay of the truth of the matter asserted. He is exploring a hypothetical conversation between Annette Quintana and Ken Swanson and asking this witness if he knows about it as if it were probative. I submit it is improper.

The CHAIRMAN. It seems to me that the question raises a question about an employee of Mr. Wright's. Perhaps you could rephrase it to avoid the objection that has been raised.

Mr. GOODMAN. Let me ask the question this way: Were you in charge of the office?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. You were the boss?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. Did you set forth the policies that you wanted your office employees to follow?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. And do you know whether or not there was a policy in your office of cross-checking returns of taxpayers who were represented in the office who shared common transactions?

Mr. WRIGHT. No, sir, we did not have that. Those type of things were seldom and far between to begin with, so there was no policy relative to it.

Mr. GOODMAN. Mr. Wright, did you have an employee by the name of Odell Wright?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. And did Odell Wright work for you in 1978?

Mr. WRIGHT. Somewhere around that time, yes, sir.

Mr. GOODMAN. All right. And Odell Wright, when he prepared returns, would run trial balances, would he not?

Mr. WRIGHT. I would imagine in certain cases. In a lot of tax returns, we did not prepare a trial balance.

Mr. GOODMAN. You say you did not prepare a trial balance, but it was Odell Wright's policy to prepare them?

Mr. WRIGHT. No. I say it was not his policy either in all cases. In tax return preparation, a lot of times you do not prepare a trial balance. Business accounts, usually you do prepare a trial balance.

Mr. GOODMAN. Do you know whether he adjusted journals?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. Was that a matter of course?

Mr. WRIGHT. If that was necessary, yes, sir.

Mr. GOODMAN. Did you ever run any trial balances on Judge Claiborne's returns?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. Did you ever see any checks which were cashed by Judge Claiborne?

Mr. WRIGHT. No, sir.

Mr. GOODMAN. So all you had available to you when you were doing his returns were the bank statements, correct?

Mr. WRIGHT. That is right, sir.

Mr. GOODMAN. Which reflected deposits?

Mr. WRIGHT. That is right, sir.

Mr. GOODMAN. And you could not tell this honorable committee whether or not the deposits were cash deposits or checks, can you?

Mr. WRIGHT. That is right, sir.

Mr. GOODMAN. All you can do is say that certain moneys went into the bank?

Mr. WRIGHT. That is right, sir.

Mr. Goodman. It is not unusual, is it, in Las Vegas, NV, for a resident of that community who is well known to cash a check at a casino, is it?

Mr. Wright. I have no knowledge of that, sir.

Mr. Goodman. All right. You are familiar with the casinos, are you not?

Mr. Wright. Yes, sir.

Mr. Goodman. You have lived in Nevada for over 35 years, right?

Mr. Wright. Yes, sir.

Mr. Goodman. It is a legitimate industry in Nevada, is it not?

Mr. Wright. No question.

Mr. Goodman. And the casinos are in many ways like banks, are they not?

Mr. Wright. Yes, sir.

Mr. Goodman. They have cages which are open 24 hours a day, do they not?

Mr. Wright. Yes, sir.

Mr. Goodman. And if they know somebody, they will, as a courtesy to that person, cash a check for them, will they not?

Mr. Wright. That is right, sir.

Mr. Goodman. And there is nothing wrong with that?

Mr. Wright. No.

Mr. Goodman. In anticipation of your testifying here today, Mr. Wright, did you prepare yourself for your testimony?

Mr. Wright. Yes, sir.

Mr. Goodman. And is that because you really do not remember what happened 8 years ago, right?

Mr. Wright. That is getting very fuzzy now, sir.

Mr. Goodman. OK. And it was fuzzy when you testified 4 years ago, or you gave statements to IRS agents then; isn't that right?

Mr. Wright. Yes, certain things were fuzzy, yes, sir.

Mr. Goodman. And of course, your memory is perhaps less good today than it was 4 years ago?

Mr. Wright. Possibly.

Mr. Goodman. It does not get better, does it?

Mr. Wright. Well, it is possible. I was ill back at that point. It is possible my recollection is better now.

Mr. Goodman. OK. But just so the record is clear, you do not have any independent recollection about any of these transactions?

Mr. Wright. Basically, no, sir.

Mr. Goodman. All right. Did you work with Mr. Skelton in anticipation of your testimony here today?

Mr. Wright. Briefly. Not very much.

Mr. Goodman. Well, Mr. Skelton is—what is he—with the IRS these days, or is he a special FBI agent?

Mr. Wright. He is a special agent, but I am not exactly sure what department he is in.

Mr. Goodman. Did you work with him in Las Vegas?

Mr. Wright. Yes.

Mr. Goodman. How many hours?

Mr. Wright. Is that relative to this trial?

Mr. Goodman. In regard to your testimony here before this honorable committee.

Mr. **Wright**. None, sir.

Mr. **Goodman**. None?

Mr. **Wright**. None.

Mr. **Goodman**. All right. Did you have available to you in Las Vegas transcripts of prior testimony?

Mr. **Wright**. Yes.

Mr. **Goodman**. From the first trial in Reno?

Mr. **Wright**. I do not believe so.

Mr. **Goodman**. From the second trial in Reno?

Mr. **Wright**. Yes, sir.

Mr. **Goodman**. Rough notes which were taken by Federal agents?

Mr. **Wright**. No, sir, I do not recall that.

Mr. **Goodman**. Reports of Federal agents?

Mr. **Wright**. I do not recall that, sir.

Mr. **Goodman**. All right. How many hours did you spend in Las Vegas anticipating your testimony here today as far as looking over material?

Mr. **Wright**. Probably 3 or 4.

Mr. **Goodman**. Three or four hours?

Mr. **Wright**. Yes, sir.

Mr. **Goodman**. That is all. And basically it was for the purpose of trying to remember what you said on the prior occasions so you could say it here again?

Mr. **Wright**. Well, to refresh my memory, yes, sir.

Mr. **Goodman**. Right, so you will be consistent with what you said during the trial.

Mr. **Wright**. Certainly.

Mr. **Goodman**. Even though you did not have any recollection of the events when you testified at trial.

Mr. **Wright**. Well, hopefully, that was the truth, you know.

Mr. **Goodman**. Hopefully, it was the truth.

Mr. **Wright**. Yes, sir.

Mr. **Goodman**. But much of it is a guess, isn't it?

Mr. **Wright**. Well, by going over documents and reviewing documents, hopefully, we have it right, sir.

Mr. **Goodman**. Who is "we"?

Mr. **Wright**. Myself.

Mr. **Goodman**. Mr. Skelton?

Mr. **Wright**. Yes, sir.

Mr. **Goodman**. And did Mr. Skelton work with you here in Washington?

Mr. **Wright**. No, sir.

Mr. **Goodman**. Well, when did he work with you in anticipation of testifying here?

Mr. **Wright**. I told you he did not.

Mr. **Goodman**. He did not at all?

Mr. **Wright**. No, sir.

Mr. **Goodman**. How about Mr. Gessinger?

Mr. **Wright**. No, sir.

Mr. **Goodman**. Did any representative work with you who was associated with the government other than the gentlemen, the managers of the House?

Mr. **Wright**. No, sir.

Mr. **Goodman**. May I request the Chair's indulgence, please?

The CHAIRMAN. Yes.

Mr. GOODMAN. Thank you.

[Pause.]

The CHAIRMAN. Mr. Goodman, since you have paused here, I have several questions from members of the committee, and it might be helpful in understanding the flow of this evidence if we ask those questions at this time, if it is not going to interrupt your cross-examination.

Mr. GOODMAN. It would not, Mr. Chairman.

The CHAIRMAN. Then, on behalf of the Senator from New Hampshire, Mr. Rudman, let me ask Mr. Wright this question.

In House exhibit No. 34, which is the 1978 tax return on schedule C, did you verify the numbers on that schedule, or were they supplied by someone else?

Mr. WRIGHT. These numbers come from our detail work. This is a 1978 return, as you will see. His figures come from our detail work that we did receive in the normal course of his monthly work, and these are from deposits that were made to his bank account.

The CHAIRMAN. And were they verified by you?

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. Senator Rudman asks the same question with respect to the 1979 return.

Mr. WRIGHT. The 1979 return was—the figures there were supplied by Judge Claiborne in a memo that he sent to me.

The CHAIRMAN. The Senator from Virginia, Mr. Warner, asks: As a professional person, what are your obligations to your client?

Mr. WRIGHT. To do the best that you possibly can. I do not understand the point of the question, possibly.

Senator WARNER. I cannot hear the witness, Mr. Chairman.

Mr. WRIGHT. To do the best you can and prepare a correct return.

The CHAIRMAN. Mr. Warner asks: Do you have obligations to the United States when you are preparing a Federal tax return?

Mr. WRIGHT. I have an obligation to prepare a correct return.

The CHAIRMAN. He says: If so, does that obligation ever conflict with your obligation to your client? Which obligation overrides the other?

Mr. WRIGHT. The Federal Government. I would have to withdraw from an engagement with my client if it conflicted with the Federal Government and certainly my ideas. You simply have to withdraw from doing work for a client.

The CHAIRMAN. And assuming that you have some obligation to the United States, does that obligation include seeking some corroboration of oral representations when there are representations that are material and important and that make material and important changes to a tax return?

Mr. WRIGHT. You need to correct the return any time it comes to your attention that there is something wrong with it, if that is the question, sir.

The CHAIRMAN. Would you repeat your answer?

Mr. WRIGHT. I am not sure I understand the question.

The CHAIRMAN. Well, let me read the question again.

Assuming that you have some obligation to the United States, does that obligation include seeking some corroboration of an oral representation when that oral representation results in material and important changes on a tax return?

Mr. WRIGHT. I do not fully understand what he is getting at. But I have—if he is getting at the total income reported on the 1979, it was my understanding for 30 years that what I had there was exactly the same as we had reported all these years.

The CHAIRMAN. I think what Senator Warner wants to know is if a client makes an oral statement to you——

Mr. WRIGHT. Yes, sir.

The CHAIRMAN [continuing]. Which has a material effect on the work that you do in preparing his tax return, do you feel an obligation to the Government to verify, to corroborate the information that has been given to you verbally?

Mr. WRIGHT. Yes, sir, if I had any doubt as to its authenticity. In this particular case, I had no doubt the figures I was using were absolutely correct. IF I had such a doubt, it would certainly have been investigated.

I would have that obligation, yes, sir. If there was a doubt in my mind, there would be an obligation on my part to pursue that.

The CHAIRMAN. I have a question from Senator Pressler. Do you believe that the letter of April 11, 1980—that is exhibit No. 36—was written by Judge Claiborne in 1982 or 1983 and back-dated, or do you think it may have been lost?

Mr. WRIGHT. I really have no idea about that, sir.

The CHAIRMAN. The Senator from Alabama asks this question: During April 1980, do you recall newspaper articles concerning an investigation of Judge Claiborne by the organized crime strike force in Las Vegas?

Mr. WRIGHT. Not specifically, sir.

The CHAIRMAN. While you were preparing the judge's 1979 return, did you and Judge Claiborne discuss the investigation and the need to be certain that the 1979 tax return was correct?

Mr. WRIGHT. Not specifically in those terms. We always discussed his return relative to it being correct and complete. But to specifically address the fact of an investigation, I do not recall that, sir.

The CHAIRMAN. I have a question from the Senator from Arkansas: When did you first have knowledge that Judge Claiborne was cashing checks, that is, legal fee checks, at a local casino?

Mr. WRIGHT. When they were shown to him at his trial—when they were shown to me at his——

The CHAIRMAN. At the trial?

Mr. WRIGHT. Yes, sir.

Senator PRYOR. I did not hear that response, Mr. Chairman.

Mr. WRIGHT. When they were shown to me during the trial; those checks were shown to me during the trial.

The CHAIRMAN. All right. Mr. Goodman, will you resume cross-examination?

Mr. GOODMAN. Mr. Wright, the figure which you placed on Judge Claiborne's 1979 tax return, which reflected income earned from Judge Claiborne's private law practice before he became a judge, was a figure which you developed, was it not?

Mr. Wright. No, sir. That was developed by Judge Claiborne telling me a breakdown on his deposits in a document that he sent to me.

Mr. Goodman. Isn't it a fact, Mr. Wright, that you were the person who gave Mr. Claiborne the figure rather than Judge Claiborne giving you the figure?

Mr. Wright. No, sir.

Mr. Goodman. You are under oath today, are you not?

Mr. Wright. I beg your pardon?

Mr. Goodman. You are under oath today?

Mr. Wright. Yes, sir.

Mr. Goodman. It is the same oath that you took when you were testifying at a prior trial, is it not?

Mr. Wright. That is right. That is right, sir.

Mr. Goodman. With the Chair's permission, I would show Mr. Wright a transcript found at page 309 of a prior proceeding, and ask whether or not he recalls a certain question being asked to him and the answer to that question.

The **Chairman.** Which proceeding did this——

Mr. Goodman. This would be the first trial.

The **Chairman.** In the first trial.

Mr. Goodman. Pardon me. The second trial.

The **Chairman.** It is the second trial?

Mr. Goodman. Yes, Mr. Chairman.

Isn't that a fact, Mr. Wright, that the figure of $22,332.87 is the figure which is reported on the judge's tax return?

Mr. Wright. That is right, sir.

Mr. Goodman. And if you recall being asked during the prior trial, question: "The figure of $22,332.87 is written in Judge Claiborne's handwriting, isn't it?"

Mr. Wright. Yes, sir.

Mr. Goodman. And your answer was: "Yes, it is."

Mr. Wright. That is right, sir.

Mr. Goodman. Do you recall being asked the question: "He had to get that figure from you, did he not?"

And what your answer was was——

Mr. Wright. I said that he did.

Mr. Goodman. All right.

Mr. Wright. At that point, I would have to clarify that. When we were going——

Mr. Goodman. Oh, please, there is no question in front of you, Mr. Wright. You said that he had to get that figure from you.

Mr. Wright. Well, that is not so.

Mr. Goodman. But you said that under oath, didn't you?

Mr. Wright. He could have had it on his own.

Mr. Goodman. Did you say it under oath, that he had to get that figure from you, did he not; your answer was: "That's right."

Mr. Wright. That is what is written there.

Mr. Chabraja. Mr. Chairman, may I interpose an objection and move to strike? That is improper impeachment material for the following reason.

The question, "He had to get that figure from you, did he not?" called for a speculative answer, and that is exactly what it received. He was asking the witness by the very terms of that question to speculate. It is improper to use an improper question for impeachment purposes.

The CHAIRMAN. If the witness knew the answer to the question, he would not have to speculate.

Mr. Goodman, I think it would be desirable if Mr. Wright could answer that question at this time.

Mr. WRIGHT. Your Honor, Mr. Claiborne could have this figure in front of him after we finished going over the deposits. He could have had the figures himself as to what his total fee income was. The fact that we related back and forth what the total figure was, is what the speculation was all about. He could have had the figure in front of him before he ever called me to tell me what the breakdown on his deposits were. He could have known what that figure was. But I do not know that he had that figure in front of him, you see.

Mr. GOODMAN. Well, if I may ask you the next question that was asked of you, and to which you answered under oath, question: "He"—meaning Judge Claiborne—"didn't have it"—meaning the figure—"himself?" question.

Answer: "No."

Mr. WRIGHT. That again is the same answer I am just giving. He could have had it. I do not know that for sure. But he could have had it right in front of him.

Mr. GOODMAN. But you were asked, were you not, whether he had it, and you said no?

Mr. WRIGHT. Well, that answer is incorrect as far as I would believe at this moment.

Mr. GOODMAN. And that is after talking to the Federal agents about it?

Mr. WRIGHT. No, sir. That is my own recollection right this minute.

Mr. GOODMAN. But I thought you said you did not have an independent recollection.

Mr. WRIGHT. Well——

Mr. CHABRAJA. Mr. Chairman, this clearly is an improper effort at impeachment. The impeachment material is to be presented, the witness afforded an opportunity to accept or reject the testimony, and he is not to be badgered with it. I think it is totally inappropriate and accordingly, object.

The CHAIRMAN. I think, Mr. Goodman, that I would have to sustain that objection.

Mr. GOODMAN. Mr. Wright, do you recall writing a letter to Stanwell Mortgage——

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN [continuing]. March 7, 1980?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. That is exhibit 18A. Do you have that in front of you, sir? Exhibit 18A.

Mr. Wright Yes, sir.

Mr. GOODMAN. Now, information was provided to Stanwell Mortgage by yourself, isn't that right?

Mr. WRIGHT. I wrote the letter. The information on the return, most of it came from Judge Claiborne.

Mr. GOODMAN. OK. And do you recall whether or not you met with Judge Claiborne around March the 7th of 1980 in person where you received that information?

Mr. WRIGHT. No, sir.

Mr. GOODMAN. Do you recall whether or not Judge Claiborne sent you a letter wherein he stated that Stanwell Mortgage needed certain information concerning his prior practice income?

Mr. WRIGHT. No, sir. He told me that on the phone. The document where we got the figures was in a written memo. We discussed it on the phone as to who I should send it to.

Mr. GOODMAN. All right. Now, you say you got the figures from a written memo.

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. Is that the memorandum which you discussed, being exhibit No. 17?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. Was that sent to you?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. Do you recall that also sent at that time was a letter from Stanwell Mortgage to Judge Claiborne, requesting certain financial data?

Mr. WRIGHT. No, sir.

Mr. GOODMAN. You do not recall having that within your possession?

Mr. WRIGHT. No, sir, I do not recall that specifically.

Mr. GOODMAN. You do not recall losing that document?

Mr. WRIGHT. No, sir.

Mr. GOODMAN. All right. Now, as far as the items which are covered in exhibit No. 17, did you sit down in person with Judge Claiborne and go over them?

Mr. WRIGHT. No, sir. It was on the phone, sir.

Mr. GOODMAN. All right. You discussed these on the phone with him?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. When?

Mr. WRIGHT. Sometime between May 28, 1980 and June 10, 1980.

Mr. GOODMAN. All right. Now, you do not have any independent recollection of that, do you?

Mr. WRIGHT. No, sir.

Mr. GOODMAN. You are just once again trying to place together as a result of other documents what the appropriate answer should be?

Mr. Wright That is right, sir.

Mr. GOODMAN. And you are also basing that answer on your discussions with Mr. Skelton and Mr. Gessinger?

Mr. WRIGHT. Of course.

Mr. GOODMAN. I have nothing further at this time.

Mr. HUGHES. Mr. Chairman, could we just have a couple minutes? We have some redirect.

The CHAIRMAN. The committee may have some questions which we will proceed to ask while you are conferring.

The Senator from Maryland, Mr. Sarbanes, refers to House exhibit No. 17, Mr. Wright, and asks: Were the notations made on the right-hand side of the page, identifying the various items of earnings made by you after you received the memorandum from Judge Claiborne?

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. And on what basis did you make those notations?

Mr. WRIGHT. Judge Claiborne told me what made up each of those deposits. He went over each deposit——

The CHAIRMAN. Would you repeat your answer?

Mr. WRIGHT. Yes, sir. Judge Claiborne told me what made up each one of the deposits. For instance, the first deposit of $20,000 was made up of cash to TCD for $10,000 that included interest of $622.17. And the balance of that deposit was a $10,000 fee. And we went through each one of the deposits, and he told me what each one was, what made up each deposit.

The CHAIRMAN. And that was a telephone conversation?

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. Is the House prepared to go forward with redirect?

Mr. HUGHES. Yes, sir.

REDIRECT EXAMINATION

Mr. HUGHES. First of all, Mr. Wright, on cross-examination, you testified in response to Mr. Goodman's questions, that you previously had about 100 hours into the case. You started to explain what that entailed. If I understand, your response was that that included a number of appearances. I wonder if you could just enunciate for us what that included, that 100 hours in preparation?

Mr. WRIGHT. Well, it was all the time spent with the Treasury Department and the Internal Revenue Department and the prosecution of—different prosecutors, you know.

Mr. HUGHES. Including time waiting for a grand jury?

Mr. WRIGHT. Oh, yes; yes, sir.

Mr. HUGHES. How about sitting in a courtroom?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. Objection to the leading and suggestive nature of the question. It is redirect.

Mr. HUGHES. I will rephrase the question.

The CHAIRMAN. Thank you.

Mr. HUGHES. Did it include any other time, aside from the preparation of documents of refreshing of your recollection?

Mr. WRIGHT. Yes. It had to include the time that I would go over testimony between the trials and all that—all the time that I had spent on the case with Judge Claiborne.

Mr. HUGHES. Did it include any travel time?

Mr. WRIGHT. Yes, sir; yes, sir.

Mr. HUGHES. To the best of your knowledge, Mr. Wright, were any documents in your current tax files of Judge Claiborne destroyed when you moved your offices?

Mr. WRIGHT. No, sir, not to my knowledge.

Mr. HUGHES. As I understand it, when you moved in September 1981, certain documents were destroyed.

Mr Wright. Yes, sir.

Mr. HUGHES. And I think you testified they were older documents?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. What was your policy with regard to destroying documents?

Mr. WRIGHT. After documents become 5 years or older, they are subject to be destroyed; if they are no longer needed and they are detail-type records, and we feel there is no further need for those records, then we are subject to destroy them.

Mr. HUGHES. So you are talking about documents that were destroyed prior to 1976?

Mr. WRIGHT. Yes, sir

Mr. HUGHES. Are your files intact, to the best of your knowledge, relative to Judge Claiborne's account?

Mr. WRIGHT. Yes, sir; yes, sir.

Mr. HUGHES. All the documents you have testified from here today were all documents found in your file?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. Every one of the documents you have testified to, including the document that is addressed "Jay," which is exhibit 17, House exhibit 17.

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. That came from that file?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. And the same thing with other documents you have testified about here today; they were all in that same file?

Mr. WRIGHT. That is right, sir.

Mr. HUGHES. None of those were missing, were they?

Mr. WRIGHT. No, sir.

Mr. HUGHES. Now, Mr. Goodman suggested that you had a number of meetings with IRS agents, FBI agents over the years that this case has been in progress. It has been a long case.

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. How long has it been, Mr. Wright, at this point?

Mr. WRIGHT. It seems like forever. Certainly, since early 1983; yes, sir.

Mr. HUGHES. I see. You have testified that you have talked with an IRS agent on a number of occasions, an FBI agent, went over those documents.

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. You have also testified that during that period of time, you traveled to and from hearings, and that was included in your estimate of hours.

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. You talked to Mr. Nick Chabraja here.

Mr. WRIGHT. Chabraja, yes, sir.

Mr. HUGHES. How about David DeBruin?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. How about the House managers staff, counsel; did you talk with them?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. Did you talk with me?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. Did any of these people ever tell you to say anything?

Mr. WRIGHT. No, sir—just to answer the questions.

Mr. HUGHES. Have you testified to anything except what, in fact, you have been able to recollect from the documents?

Mr. WRIGHT. No, sir.

Mr. HUGHES. Or your independent recollection?

Mr. WRIGHT. That's it, sir.

Mr. HUGHES. Now, you testified that you were very seriously ill back in 1983. That was about——

Mr. WRIGHT. In 1982—and 1983, yes, sir.

Mr. HUGHES. In 1982 and 1983; radiation treatment?

Mr. WRIGHT. Yes, sir; yes, sir. I had radiation umanitis, which they burned my lungs very badly, and I had to go back in the hospital for 3 weeks for treatment of the radiation umanitis.

Mr. HUGHES. So your testimony today is that you have been able to refresh your recollection from examining those records?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. Maintained by you in the course of your business as a public accountant?

Mr. Wright That is right, sir.

Mr. HUGHES. And they assisted you in refreshing your recollection?

Mr. WRIGHT. That is right, sir.

Mr. HUGHES. I believe I have no further questions of this witness, Mr. Chairman.

Mr. GOODMAN. Mr. Chairman. May I proceed, Mr. Chairman?

The CHAIRMAN. Mr. Goodman, please proceed.

Mr. GOODMAN. Thank you, sir.

RECROSS-EXAMINATION

Mr. GOODMAN. I am not sure I heard you right, Mr. Wright, when Representative Hughes asked you whether or not you ever lost any documents which belonged to Judge Claiborne. Did he ask you that question?

Mr. WRIGHT. I believe he did.

Mr. GOODMAN. And your answer was——

Mr. WRIGHT. Not to my knowledge.

Mr. GOODMAN. Not to your knowledge.

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. Now, do you recall testifying in a prior proceeding where that question was asked of you?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. And do you recall that the question pertained to the exhibit which is the April 11, 1980, letter from Judge Claiborne to you?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. The letter which we suggest was delivered by Judy Ahlstrom. All right. Do you recall being asked whether or not you recognized the handwriting on that exhibit—and for counsel, Mr. Chairman, I am referring to page 404 of the first trial—do you recall being asked whose handwriting it is and stating it was Mr. Claiborne's?

Mr. Wright. Yes, sir.

Mr. Goodman. And do you recall being asked the question, It is a fact that at one time you moved your office, did you not, and your answer was "yes"?

Mr. Wright. Yes.

Mr. Goodman. And do you recall being asked the question, In the course of moving, some records were lost or mislaid, were they not, and your answer was, "That is true"; do you recall that?

Mr. Wright. I recall that.

Mr. Goodman. And do you recall being asked the question, Some of those records related to Harry Claiborne's files, did they not, and your answer under oath was, That is true; wasn't it?

Mr. Wright. That is what I testified, but that is not so. I either misunderstood the question or did not relate to that as the difference between destroying records and losing records.

Mr. Goodman. OK. Well, let me ask you the next question and your answer and see whether or not it helps refresh your recollection as to the truth.

Mr. Wright. All right, sir.

Mr. Goodman. Question: Isn't it possible that the original of this letter may have been in one of those files that were lost or mislaid? And you answered: Certainly could be.

Mr. Chabraja. Your Honor, may I object and move to strike once again. The question that he seeks to impeach Mr. Wright which was speculative and it obtained a speculative answer. Both the question and the answer were conjectural.

Mr. Goodman. Mr. Chairman, I would respectfully submit that there is nothing speculative about that. He is indicating that he has no—he has testified very certainly, with great certainty about this, that he never received it. And when his recollection should have been more certain than it is today, his answers were different under oath.

Mr. Chabraja. Mr. Chairman, the question by its very terms was improper and would have been stricken had an objection been interposed at the trial. It read: "Isn't it possible," called for possibilities, not fact or recollection. Mr. Wright testified, "Certainly." Certainly, all things are possible, but that is not proper impeachment material, even though an objection was not interposed at the trial when this evidence went in. It was just conjecture then. It does not elevate its status now by repeating it.

Mr. Goodman. Mr. Chairman, I would suggest that it is an admission on the part of Mr. Wright and a prior inconsistent statement.

The **Chairman.** I am going to overrule the objection, but I am going to suggest that Mr. Wright give us his best answer at this time.

Mr. Wright. I am sorry, sir?

The **Chairman.** We want you to answer the question now.

Mr. Wright. I do not believe that I lost any records of Judge Claiborne's. I think we destroyed, and we certainly did destroy—at that time, I probably had 25 years of records or 30 years of records in my possession, and we did not want to move them. And so we did destroy check registers and a lot of other detailed material that would hopefully never be used again. And in the normal course of our business, we destroy up to the five prior years. And that certainly is what we should have been doing at that time to save moving them to a new office. To my knowledge, we did not destroy or lose anything that was pertinent within that 5-year period.

Mr. GOODMAN. So your answer today is different from your answer before?

Mr. WRIGHT. That is right, sir.

Mr. GOODMAN. Nothing further.

The CHAIRMAN. Mr. Wright, I have several questions from members of the committee.

The Senator from Arizona, Mr. DeConcini, wants to know: How many years did you prepare Mr. Claiborne's tax returns?

Mr. WRIGHT. Thirty years.

The CHAIRMAN. Were any of those returns ever subject to an IRS audit?

Mr. WRIGHT. As I recall, early on in our practice he did have an audit, yes, sir.

The CHAIRMAN. And what was the result of that audit?

Mr. WRIGHT. He had to pick up a little bit of additional income, as I recall.

The CHAIRMAN. And how long ago did that take place?

Mr. WRIGHT. It would have to be in the early fifties, middle fifties, possibly.

The CHAIRMAN. The Senator from Virginia, Mr. Warner, asks: You wrote a mortgage company on March 7, 1980 Judge Claiborne's earnings from the private practice of law for the year 1979 was $45,371.93. That is exhibit 18A.

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. After receiving the corrected figures in June, did you seek to revise your statements to the mortgage company in a spirit of accuracy?

Mr. WRIGHT. We did not follow through on that, sir.

The CHAIRMAN. Senator Warner also asks: In response to Senator Rudman's question, you stated that you prepared the 1978 return by following your customary practice of carefully examining records, bank statements and the like. In response to my earlier question, you prepared the 1979 return not with the original records except for the W-2, but with the oral representations from Judge Claiborne.

Mr. WRIGHT. That is right, sir.

The CHAIRMAN. Why this change in your usual procedure?

Mr. WRIGHT. Because in 1979, I did not have any original records. Those had ceased to exist, to come to my office. And Judge Claiborne had to supply all the information that was used for his 1979 return. And he did that either orally or by phone or by memos.

The CHAIRMAN. Now, why did that procedure change?

Mr. WRIGHT. He had ceased to be in business for himself, and we were not getting the detailed information every month; it just simply did not come in.

The CHAIRMAN. While he was in the private practice of law, you picked up the information monthly from his law office?

Mr. WRIGHT. That is right.

The CHAIRMAN. But once he went on the bench, that practice was discontinued?

Mr. WRIGHT. That is right. I no longer went to his office; that is right, sir.

The CHAIRMAN. Now, the Senator from Alabama, Mr. Heflin, has asked me to propound a question which refers to Judge Claiborne's testimony in the case, in which he called you and asked you what information you needed, what additional information you needed, and you mentioned among other things your wages.

Do you remember that?

Mr. WRIGHT. Not specifically, sir.

The CHAIRMAN. And then he testified he responded, "Well, I have sent you the W-2." His testimony was, "For goodness sakes, I delivered the W-2 to you the other day." And then you checked and agreed that you had the W-2. And then he talks about interest and other matters, and then he asks about the total.

And he says that you said, "Yes, I have that; $22,332.87," and that you said you wrote that down on the side of the paper—Claiborne said it. Did you say it? Did you say you wrote it down, or did Judge Claiborne say he wrote it down?

Mr. WRIGHT. I didn't write that figure on that document. I think I had an adding machine tape that was attached to this. After he told me the four items that made up the $22,000, I ran a tape on them and attached that tape to this document.

And I do not see an indication here on the document where I wrote it on the document itself.

The CHAIRMAN. But the notations you made are the ones that appear on the side of exhibit No. 17?

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. And the figure does not appear?

Mr. WRIGHT. No, the $22,000 figure does not appear.

The CHAIRMAN. Was it your understanding that Judge Claiborne wrote that figure down?

Mr. WRIGHT. I don't know what he did, sir.

The CHAIRMAN. When you ran your adding machine tape, did you give that figure to Judge Claiborne?

Mr. WRIGHT. I don't recall, sir. I would imagine we did. At the time we were discussing the breakdown on these deposits, I am sure we arrived at the total, and I attached my tape to the document, and he possibly wrote the figure down on his own papers. I just don't know what he did.

The CHAIRMAN. Do you recall mentioning that figure on the telephone?

Mr. WRIGHT. Not specifically, sir.

The CHAIRMAN. Anything further, Mr. Goodman?

Mr. GOODMAN. Yes, Mr. Chairman.

Last week, Mr. Chairman, the Chair ruled on our discovery request concerning prior grand jury testimony which was under seal and documents referred to as 302—those are FBI reports or memoranda prepared by the IRS which were under seal, although a novel and perhaps unprecedented request in an impeachment proceeding could not be acted upon favorably by the Chair because the documents were not within the jurisdiction of the Senate.

This past week on, I believe, either Thursday or Friday—the time blends together—I had the occasion to speak with the clerk of the court, the Federal court in Reno, NV, who in turn had a conversation with Judge Walter Hoffman, the trial judge, concerning the transmission of all sealed documents which have been gathered in the past, representing governmental matters to be forwarded to the Senate. If in fact that has arrived—and I was assured that it would—I would respectfully renew the motion at this time and ask the Chair at the very least to review the documents in camera and to make a determination as to whether or not any of the material contained therein is exculpatory to the Articles of Impeachment.

The **CHAIRMAN**. Thank you, Mr. Goodman.

Mr. Chabraja, did you want to respond?

Mr. **CHABRAJA**. Mr. Chairman, I believe that Mr. Goodman is misinformed. I had a conversation with Judge Hoffman, as I believe members of the Senate staff had in our search for true and correct and readable copies of the exhibits that have been introduced in this proceeding.

Judge Hoffman entered an order, a copy of which is sitting back on my desk, and I am sorry I did not bring it with me—I received it today—delineating those documents that he directed the clerk of the court to transmit forthwith to the Secretary of the Senate. And we should expect the receipt of those documents, and I can bring the letter in.

Judge Hoffman did not, to my knowledge, direct the delivery of grand jury materials, as suggested by Mr. Goodman.

In any event, I understand that with respect to this witness, Mr. Goodman has all grand jury materials and has had them for a long time.

The **CHAIRMAN**. Let me advise the parties that just immediately prior to the convening of the afternoon session, the Chair received information that some sealed material has been transmitted from Judge Hoffman. What it is, I do not know, because it is still under seal. Some of it has labels; some of it does not. But we will ascertain, and we will take Mr. Goodman's renewed motion under advisement in the light of the receipt of this material.

Mr. **GOODMAN**. Thank you, Mr. Chairman.

Based on that, I would like my subpoena to continue in effect of Mr. Wright, pending the determination by the Chair.

The **CHAIRMAN**. Let me ask you, Mr. Goodman, what grand jury material have you already received with respect to Mr. Wright?

Mr. **GOODMAN**. Mr. Chairman, it is my belief that as far as Mr Wright is concerned, we have received all the grand jury material as it pertains to him. The item which I am interested in is whether or not there are additional memorandums of interview either by the FBI or the IRS, either in the form of typed documents or rough notes, which pertain to interviews of Mr. Wright. And I do not know whether they exist or not. There was a very limited ruling during the course of the trial as far as what is referred to as Jenks Act material. Judge Hoffman took the position that unless a particular document had quotation marks around it, we were not entitled to it, and it was a procedure where I was provided with words rather than with pages, and it did me very little good.

The **CHAIRMAN**. Well, I have to be candid with you; I cannot advise you what is in this sealed material because I simply do not know, and the committee has not yet made a determination as to what action it will take.

We will grant Mr. Goodman's request that Mr. Wright remain under subpoena until some further direction from the committee.

You can step down, Mr. Wright.

[Whereupon, the witness was excused.]

The **CHAIRMAN**. The next witness will be the managers' witness, Constance Wright.

Ms. Wright, will you raise your right hand? Do you swear that all the testimony you will give in the impeachment proceeding now pending will be the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. **WRIGHT**. I do.

Mr. **HUGHES**. Would you be more comfortable sitting, Mrs. Wright?

Ms. **WRIGHT**. Thank you.

DIRECT EXAMINATION

Mr. **HUGHES**. I wonder if you could just speak up for us.

The **CHAIRMAN**. Perhaps if you will take a seat, it will be easier to speak directly into the microphone.

Do not be nervous.

Ms. **WRIGHT**. I'll try.

The **CHAIRMAN**. Just speak directly into the microphone.

Mr. **HUGHES**. Please state your full name and spell your last name for us.

Ms. **WRIGHT**. My name is Constance Wright, W-r-i-g-h-t.

Mr. **HUGHES**. Ms. Wright, where do you live?

Ms. **WRIGHT**. I live at 1924 East Oakey Boulevard in Las Vegas, NV.

Mr. **HUGHES**. Do you know a man named Joseph C. Wright?

Ms. **WRIGHT**. Yes. I have been married to him for 42 years.

Mr. **HUGHES**. Ms. Wright, have you worked during your lifetime?

Ms. **WRIGHT**. Most of it, yes.

Mr. **HUGHES**. And what have you done in the last few years?

Ms. **WRIGHT**. I have been secretary for my husband

Mr. **HUGHES**. Over what period of time?

Ms. **WRIGHT**. Oh, many, many years.

Mr. **HUGHES**. What were your duties as secretary?

Ms. **WRIGHT**. Well, I type letters, I type financial statements, I type payroll tax reports, I answer the telephone, I make appointments, I do some bookkeeping—regular secretarial duties.

Mr. **HUGHES**. Thank you.

Do you know a man named Harry E. Claiborne?

Ms. **WRIGHT**. Yes, sir, I do.

Mr. **HUGHES**. And how do you know him?

Ms. **WRIGHT**. I have known Judge Claiborne for 30 years as a friend and as a client.

Mr. **HUGHES**. A client of the office?

Ms. **WRIGHT**. Yes.

Mr. HUGHES. Did you personally do any work in connection with Mr. Claiborne's account?

Ms. WRIGHT. Yes. I did the bookkeeping, the detailed bookkeeping on Judge Claiborne's account because he was very special to me, and I liked doing it. I posted all the checks, all the deposits; I did the bank reconciliations, I did his payroll tax reports, and I wrote him a note each month telling him exactly what I had done, what his bank balance was, and asked him questions of things I did not know what to do with.

Mr. HUGHES. It sounds like you took special pride in that particular account.

Ms. WRIGHT. I did, very much so.

Mr. HUGHES. How did you maintain the records? Can you describe it to the panel?

Ms. WRIGHT. Well, in the last few years, the bank statements came directly to our office. Judge Claiborne was a very busy man, so he did not always fill in his check stubs, so there were many blank check stubs, and I would get the information from the checks themselves.

However, in the last few years, when Jenny McIlwaine was his secretary, I would call her, and she was very cooperative and very helpful, and she would help me with a lot of matters. And also, she would make a copy of all the receipts that she received payment from clients, and she would send them to me, and I would compare the receipts with the deposits and balance them, and then I would throw them away.

Mr. HUGHES. Would you make it a practice of copying documents in your office?

Ms. WRIGHT. Yes, we copied everything, or tried to, yes.

Mr. HUGHES. Did you do that with reference to Judge Claiborne's account?

Ms. WRIGHT. I think so, yes.

Mr. HUGHES. What were the results of your efforts with respect to maintaining Mr. Claiborne's files?

Ms. WRIGHT. We had a file for all our clients. Judge Claiborne's files are still in there, still there, intact. We didn't throw anything away from his files.

Mr. HUGHES. To your knowledge, did you lose anything of Mr. Claiborne's?

Ms. WRIGHT. Not that I know of.

Mr. HUGHES. Ms. Wright, I would like to show you for identification what has been marked as House Exhibit 36 for identification and ask you if you can identify this for us. Are you familiar with that document?

Ms. WRIGHT. Yes.

Mr. HUGHES. When did you first see that particular document?

Ms. WRIGHT. I do not really know. My husband gave it to me and asked me to please go through the files, sheet by sheet, and try to find the original copy of this. And I truly wanted to find it, but I did not.

Mr. HUGHES. Do you know when that was approximately that you made that examination?

Ms. WRIGHT. Do not ask me for dates. I do not really know about dates.

Mr. HUGHES. I see. When did you first see that particular document?

Ms. WRIGHT. I don't know.

Mr. HUGHES. Well, the document is——

Ms. WRIGHT. After the—no—it was when the investigation was going on, and they were looking for papers in the files. He brought this particular paper to me and he said, "I want you to find this. But go through the file. Don't just thumb through it. Take every paper out and try to find the original of this letter. I want it." And I did just that.

Mr. HUGHES. What date is the document dated?

Ms. WRIGHT. I think April 11. What was the number on it? April 11, 1980.

Mr. HUGHES. And it is your testimony that it was after the investigation began that you made this search?

Ms. WRIGHT. Yes.

Mr. HUGHES. What if anything did you do after your husband showed you the document? What did you do, specifically?

Ms. WRIGHT. Just searched for it.

Mr. HUGHES. And what did you do to search for it?

Ms. WRIGHT. I brought the files all out on my desk and just emptied the whole files and went through them one by one.

Mr. HUGHES. And what was the result of your search?

Ms. WRIGHT. I did not find this particular note.

Mr. HUGHES. I have no further questions.

Mr. GOODMAN. May I cross-examine, Mr. Chairman?

The CHAIRMAN. Mr. Goodman.

Mr. GOODMAN. Thank you.

CROSS-EXAMINATION

Mr. GOODMAN. Good afternoon, Ms. Wright.

Ms. WRIGHT. How do you do, Mr. Goodman?

Mr. GOODMAN. I have to defer the answer to that question.

You indicated that there was a request by your husband for you to search for exhibit No. 36.

Ms. WRIGHT. Yes.

Mr. GOODMAN. And he wanted you to look through various files to find out whether or not that particular document was on the premises of your office?

Ms. WRIGHT. Yes.

Mr. GOODMAN. Can you help us by trying to pinpoint with any type of particularity the time that the request was made for you to search for the document?

Ms. WRIGHT. It was during the time of the investigation.

Mr. GOODMAN. Now, you say "the investigation"——

Ms. WRIGHT. When they were at our office, going through our files and trying to ask questions.

Mr. GOODMAN. Who was that?

Ms. WRIGHT. I do not know their names.

Mr. GOODMAN. Were they representatives of——

Ms. WRIGHT. Internal Revenue or of the Treasury Department—I did not pay too much attention, because I did not think there was anything wrong.

Mr. GOODMAN. Or the FBI?

Ms. WRIGHT. I don't know.

Mr. GOODMAN. OK. And were they by your place frequently?

Ms. WRIGHT. Yes. They came several times.

Mr. GOODMAN. By "several times," would you say more than five times?

Ms. WRIGHT. I do not know that they came five times.

Mr. GOODMAN. OK, but more than two times?

Ms. WRIGHT. Yes. Two or three times.

Mr. GOODMAN. Would it be fair to say between two and five times?

Ms. WRIGHT. Yes, it would be fair.

Mr. GOODMAN. All right. And when they got there, did they look through various documents?

Ms. WRIGHT. Yes.

Mr. GOODMAN. Did they take anything with them?

Ms. WRIGHT. No, nothing was taken.

Mr. GOODMAN. Were you with them at all times?

Ms. WRIGHT. Yes.

Mr. Goodman You never left them?

Ms. WRIGHT. No. Don Skelton was in the office and asked for the files. I brought out every file that we have, and he photographed things, but I was there.

Mr. GOODMAN. Don Skelton was the IRS agent who was working on the case; is that right?

Ms. WRIGHT. Yes, yes.

Mr. GOODMAN. And would he ask you to xerox certain copies for him?

Ms. WRIGHT. No. He did it. I did not.

Mr. GOODMAN. Did you go with him?

Ms. WRIGHT. I was there in the office.

Mr. GOODMAN. Did you go with him?

Ms. WRIGHT. I brought him into a small office right next to mine, and I was in there.

Mr. GOODMAN. Was he with anybody else when he was there?

Ms. WRIGHT. No, I do not think so.

Mr. GOODMAN. Was he always by himself?

Ms. WRIGHT. I cannot remember.

Mr. GOODMAN. Do you remember a gentleman by the name of Gessinger?

Ms. WRIGHT. No, I do not know him. I do not remember him at all.

Mr. GOODMAN. All right. Do you remember a gentleman by the name of Halper?

Ms. WRIGHT. No. I do not remember them. They were probably there, but I just do not remember who they were. I did not pay any attention.

Mr. GOODMAN. And when they were there, did they ask certain questions about Judge Claiborne's files?

Ms. WRIGHT. They did not ask me anything.

Mr. GOODMAN. All right. They just looked through the documents and asked for copies to be made; is that correct?

Ms. WRIGHT. Asked me to make all copies of his income tax returns for quite a number of years, and I copied them all and had them.

Mr. GOODMAN. Were there any other employees working for your husband's business at that time?

Ms. WRIGHT. Yes. There was Ken Swanson and Maxine Norris and Jesse Harris.

Mr. GOODMAN. What were their positions?

Ms. WRIGHT. Maxine Norris was an accountant; Ken Swanson is an accountant; Jesse Harris was a detail person, just as I was, and I was the secretary.

Mr. GOODMAN. OK. I would like to call your attention to April 11, 1980. Did you see Judge Claiborne on that day?

Ms. WRIGHT. I saw Judge Claiborne one day. He came up to the office, and he asked me if he could look through the file, that he was looking for a paper. And while he was looking for it, I sat there, and we talked and laughed, and that's the only time I saw him.

Mr. GOODMAN. That is the only time you ever saw him at the office?

Ms. WRIGHT. No. At that time.

Mr. GOODMAN. Well, my question goes to a different time. On April 11, 1980, which is the day which is reflected on exhibit No. 36——

Ms. WRIGHT. Yes.

Mr. GOODMAN [continuing]. Did you see Judge Claiborne at the office?

Ms. WRIGHT. No.

Mr. GOODMAN. At all?

Ms. WRIGHT. I do not remember seeing him there.

Mr. GOODMAN. Do you recall seeing him there, giving your husband a check in the amount of $2,500 in order to file his estimated taxes for the year 1980?

Ms. WRIGHT. I do not recall that. That does not mean he was not there. I just do not recall. It has been a long time ago, too. It is hard to remember all these things.

Mr. GOODMAN. Sure. Do you know who Judy Ahlstrom is?

Ms. WRIGHT. No, I have never seen Judy Ahlstrom.

Mr. GOODMAN. You do not know Judy Ahlstrom?

Ms. WRIGHT. I have never met any of Judge Claiborne's secretaries, except the very first girl, and I met Jenny McIlwaine at the trial in Reno. We talked by phone, but I have never met—and I think if I had seen Judy Ahlstrom, I would certainly have remembered it if she were Judge Claiborne's secretary, because he was important to me.

Mr. GOODMAN. All right. But you do not remember seeing Judge Claiborne on April 11, 1980, do you?

Ms. WRIGHT. I cannot say that I do.

Mr. GOODMAN. Thank you.

The Chairman. Thank you very much. Hold on just a minute.

Senator Warner asks you this question: For 30 years, you carefully prepared Judge Claiborne's tax returns from records, many of which you personally verified and cross-checked. When the 1979 return was prepared, you made substantial changes only on the basis of the judge's telephone calls. After 30 years of doing business one way, with records, why now rely so heavily on just oral representations for the 1979 returns?

Ms. WRIGHT. I never prepared Judge Claiborne's returns. I just did merely the detailed bookkeeping. When Judge Claiborne became a judge, as my husband has told you, the work began to dribble down. And we prepared the 1979 return—the 1979 return was prepared in our office, and when it was time for the 1980 return, I kept asking, "Why don't you call Harry? What are we doing?" And after he had called him five or six times, I said, "I am really worried about Judge Claiborne's return. Are we not going to do it?" And he said, "Don't worry about it. There isn't much to it. And Judge Claiborne is a very intelligent man. He is probably doing it himself." And we just forgot about it.

And that's the truth.

The CHAIRMAN. Now, in the course of the years in which you handled Judge Claiborne's records, did you see a number of notes from him or notations from him on documents or records?

Ms. WRIGHT. He would write notes. I wrote him notes every month, and he would answer and return them.

The CHAIRMAN. Well, I want you to look at House exhibit No. 36, which is the letter dated April 11, 1980, and then I would like you to look at House exhibit No. 17, which is the memorandum that Judge Claiborne sent to Mr. Wright in connection with the mortgage application. And I am wondering which is typical of the kind of record you normally got from Judge Claiborne in the usual course of business?

Ms. WRIGHT. The records that I received from Judge Claiborne were his check stubs and his bank statements and his payroll tax reports. That is all that I had to do with. These notes meant nothing to me. I did not prepare the returns.

The CHAIRMAN. We have a question from Senator Pressler: Did Judge Claiborne have a practice of keeping xeroxes of his handwritten notes? Have you ever seen another time when he xeroxed a note such as the April 11, 1980, note?

Ms. WRIGHT. I do not know what his practice was, whether he kept copies of his notes or not. I am sure he did. He had a secretary.

The CHAIRMAN. Senator Warner asks you to compare the handwriting in exhibit No. 17 which I just called to your attention and exhibit No. 36. Are they, in your opinion, written by the same person, to wit, are they both written by Judge Claiborne?

Ms. WRIGHT. Yes, they are both written by Judge Claiborne. I am very familiar with his signature.

The CHAIRMAN. The Senator from Alabama, Mr. Heflin, asks: Prior to becoming a judge, would Judge Claiborne send letters or written memos to the office that were handwritten, or were they usually typed?

Ms. WRIGHT. Handwritten, I would say.

The CHAIRMAN. After becoming a judge, did the practice change?

Ms. WRIGHT. Yes. There were no messages, no notes.

The CHAIRMAN. Senator Hatch asks the question: You have previously testified that the IRS agents were in the office between two and five times, I believe?

Ms. WRIGHT. Approximately, I would say that.

The CHAIRMAN. How many times, if you recall, did they actually review the files, did they actually look at the records?

Ms. WRIGHT. Well, I would say just the one time that Don Skelton copied what was in the file.

The CHAIRMAN. Just the one time.

Ms. WRIGHT. And then asked me for copies of the returns, which I made.

The CHAIRMAN. Did he make the xerox copies?

Ms. WRIGHT. Yes. Now, are you talking about Don Skelton?

The CHAIRMAN. Yes.

Ms. WRIGHT. Yes.

The CHAIRMAN. Did he do it in your presence?

Ms. WRIGHT. Yes, I was there.

The CHAIRMAN. You were there at all times?

Ms. WRIGHT. Yes, sir. Nothing—I do not think anything was taken out of——

The CHAIRMAN. And you are satisfied that all of the records that were removed from the file for the purpose of copying were returned to the file?

Ms. WRIGHT. Yes, and they are still there.

The CHAIRMAN. Thank you very much, Miss Wright. You may step down.

[Witness excused.]

The CHAIRMAN. The next witness is the managers' expert witness, William L. Wilson.

Mr. Wilson, will you raise your right hand.

Do you swear that all the testimony you will give in this impeachment proceeding is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. WILSON. I do.

The CHAIRMAN. Mr. DeWine.

DIRECT EXAMINATION

Mr. DEWINE. Mr. Wilson, could you state your full name for us, please.

Mr. WILSON. Yes. William L. Wilson, W-i-l-s-o-n.

Mr. DEWINE. And Mr. Wilson, what is your full address?

Mr. WILSON. 17727 Taniger Lane, South Bend, IN.

Mr. DEWINE. And what is your occupation, sir?

Mr. WILSON. I'm a certified public accountant and a partner with the firm of Crowe, Chizek & Co., CPA's.

Mr. DEWINE. Could you describe for us today what formal education you have received.

Mr. WILSON. Yes. I graduated from Indiana University in 1964 with a bachelor of science degree in accounting. Then, in 1965, I obtained a master's of business administration from Indiana University.

Mr. DEWINE. Mr. Wilson, have you obtained any additional, have you been involved in any additional education taken in courses, or any continuing education?

Mr. WILSON. Yes. There is a two-prong area there. No. 1, our firm has always had a quality standard, that we had to attain at least 40 hours of continuing professional education every year. Then, in addition, the Indiana State Licensing Board adopted continuing education requirements for CPA's in Indiana, which also requires 40 hours of training each year.

Mr. DeWine. So you have done this each year since when?

Mr. Wilson. Each year since I went with the firm in 1965.

Mr. DeWine. In addition to these courses and seminars that you have taken, have you ever had occasion to lecture, or to teach, yourself?

Mr. Wilson. Yes. On quite a few occasions, I've been a lecturer with various programs of the American Institute of Certified Public Accountants. I've been a lecturer at the Estate Planning Institute of the University of Notre Dame. I've been a speaker at the Federal Tax Institute, sponsored by the Indiana Bar Association, and the Indiana Society of CPA's.

Mr. DeWine. All right. Mr. Wilson, have you had occasion to write any articles in this field?

Mr. Wilson. Quite frequently we've published articles in the three magazines, primarily the Hoosier Banker, the Ohio Banker, and the Illinois Banker. Those articles would cover both taxation of financial institutions as well of taxations of individuals as they relate to customers of the banks, and executives of the banks.

Mr. DeWine. In addition to lecturing and writing, have you ever testified in court as an expert witness in the tax field?

Mr. Wilson. Yes. I have.

Mr. DeWine. Would you have any idea of how many times you have done this?

Mr. Wilson. No. I really don't know. It would be in excess of twenty times, though.

Mr. DeWine. Who did you tell us you were employed by?

Mr. Wilson. Crowe, Chizek & Co. C-r-o-w-e, C-h-i-z-e-k & Co., CPA's.

Mr. DeWine. What does that firm do?

Mr. Wilson. We're a large regional certified public accounting firm with offices in Oakbrook, IL, Grand Rapids, MI, Indianapolis, IN, South Bend, IN, Elkhart, IN, and Michigan City, IN. We have about 360 professionals and we're broken into the traditional divisions of taxation, auditing, and management advisory services, and I head up the tax division for the firm.

Mr. DeWine. What does your specific job, your current job consist of?

Mr. Wilson. Again there are probably two prongs to it. One would be the professional side of consulting and working with clients in the areas of tax planning and determination of their tax liabilities. My direct client responsibilities would be a few professional individuals, either lawyers or doctors or dentists, as well as some retired individuals. In addition I have direct responsibility for three or four executives of closely held businesses.

The other side of the job would include chairing the professional tax committee of the firm which oversees the quality controls of the firm, that everyone is producing at our standards, that continuing education goes on, that review goes on, as well as serving on the executive committee of the firm, which takes up quite a bit of time.

Mr. DeWine. All right. Mr. Wilson, do you yourself personally still prepare any 1040 returns?

Mr. Wilson. Yes. I have roughly 20 returns of individuals that, because of various friendships over the years, I've retained the contact and I do those returns. Again doctors and lawyers. And then in addition, I probably directly review another 20 or 30 returns per year.

Mr. DeWine. All right. And that would be your current practice?

Mr. Wilson. Yes.

Mr. DeWine. And prior to this time, in the years that you have been with the firm, have you always prepared some returns?

Mr. Wilson. Yes. That's correct.

Mr. DeWine. Could you tell us whether or not you are employed in your occupation with any other firm, prior to this firm.

Mr. Wilson. Yes. When I graduated from Indiana University in 1965, my entry position was with Peat, Marwick Mitchell & Co., CPA's, in Los Angeles, CA. I served in their auditing division for savings and loan associations.

Mr. DeWine. How long were you with them?

Mr. Wilson. Approximately 6 months.

Mr. DeWine. Could you tell us what type of client that you would prepare returns for now.

Mr. Wilson. Typically, it would be the owner of a closely held business, or, again, the attorney, of the medical person, the retired individual who has sold his business and has primarily investments, and areas like that.

Mr. DeWine. Mr. Wilson, in your current position, have you had occasion to represent taxpayers in front of administrative bodies?

Mr. Wilson. Yes, throughout the years, and as a matter of fact even today, there are constant hearings going on between the administrative levels. At the appeals level of Internal Revenue Service. At pretrial hearings of the U.S. Tax Court. At all times there are some hearings going on.

Mr. DeWine. And what would your job be there?

Mr. Wilson. It's an advocate position for the taxpayer, trying to resolve the issues that have been raised by the Internal Revenue Service.

Mr. DeWine. All right. Thank you very much, Mr. Wilson.

Are you familiar with Harry Claiborne's 1980 income tax return?

Mr. Wilson. Yes. I am.

Mr. DeWine. And how did you become familiar with that document?

Mr. Wilson. You gave that to me, sir, and I reviewed it.

Mr. DeWine. I am going to hand you what has been marked as exhibit No. 27 and ask you to look at that please.

Mr. Wilson. Yes.

Mr. DeWine. Could you identify that for us, please.

Mr. Wilson. That is a copy of the 1980 tax return that you gave me to review, for Harry E. Claiborne.

Mr. DeWine. Have you thoroughly reviewed that particular document?

Mr. Wilson. Yes. I have.

Mr. DeWine. Could you tell us where, on that particular document, specifically Judge Claiborne's 1980 1040 form, is reported legal fee income, or income that he would have received from legal work.

Mr. WILSON. I did not find any reporting of legal fee income on the 1980 tax return.

Mr. DEWINE. Mr. Wilson, where, on a typical 1040 form would we normally, or would you expect to find such income reported?

Mr. WILSON. Well, the first place that I would look would be schedule C, which is a schedule to report the profit or loss from a trade or business by an individual who is not incorporated. It allows you to report your receipts and to list your various categories of expense, and to determine what your net profit from your unincorporated business is.

Mr. DEWINE. Do you find a schedule C on Judge Claiborne's 1980 income tax return?

Mr. WILSON. No. I do not.

Mr. DEWINE. Mr. Wilson, is there any other place that you might expect to find such a report of income, or that it might be proper to report it?

Mr. WILSON. Yes. I think it would also be appropriate to report the income on page 1. There is a category called miscellaneous income. On the 1980 return, that happens to be line 21, where it asks you to state the source and the nature of the income, and you might report legal fees there. Typically, director fees, and other items of earned income are reported there.

Mr. DEWINE. What kind of fees? I am sorry.

Mr. WILSON. Director fees are reported on that line, but it would be appropriate to report legal fees on that line, particularly if you didn't have a lot of business expenses to deduct from those fees.

Mr. DEWINE. Mr. Wilson, in regard to Judge Claiborne's 1980 income tax return, what do you see when you look at line 21?

Mr. WILSON. There is no entry on line 21, other income.

Mr. DEWINE. Now Mr. Wilson, is there any other place that one could logically look to find legal fee income reported on a 1040 return?

Mr. WILSON. Yes. I did look to see if there was a schedule E attached to the return.

Mr. DEWINE. What is schedule E, Mr. Wilson?

Mr. WILSON. Schedule E allows a partner in a business to report his distributive share of a partnership profit or loss. So I just checked to see if, perchance, that the legal fees were reported on schedule E.

Mr. DEWINE. And on Judge Claiborne's 1980 income tax return, is there a schedule E?

Mr. WILSON. No. There is not.

Mr. DEWINE. Now Mr. Wilson, I wonder if you could tell us how long there has been schedule C's on these 1040 returns. Is this something new?

Mr. WILSON. It's been in existence at least as long as I've been in practice for 20 years. It's my belief that it has not changed. Way before that even, it has always been the same schedule.

Mr. DEWINE. Has it changed during your experience, during the time that you have been in practice has it changed in any regard as to what is required to be reported on that?

Mr. WILSON. No. Only more detail.

Mr. DeWine. Looking at Judge Claiborne's 1980 income tax return, do you see legal fee income anywhere?

Mr. Wilson. No. I do not.

Mr. DeWine. Let me move, if I could, Mr. Wilson, on the same exhibit to schedule D. Could you tell us, please, what the function is of a schedule D on a 1040 income tax return.

Mr. Wilson. Yes. Schedule D is a form to report the gain or loss from the sale or exchange of a capital asset. For example, if you own some stock and you sold it for a gain or loss, you would report the transaction on schedule D.

Mr. DeWine. What exactly is a capital asset, a capital exchange, or loss?

Mr. Wilson. A capital asset has a strict definition within the Internal Revenue Code. Section 1221 defines a capital asset. Generally speaking, it is anything other than specific exclusions. For example, the law does not allow you to say that your inventory is a capital asset. It does not allow you to say that the property that you depreciate in your business is a capital asset.

It specifically says that an account receivable is a capital asset, but in generally speaking terms, getting rid of the exclusions, a capital asset is in the nature of a stock or a bond, or the good will of a business, something of that nature.

Mr. DeWine. And how would that compare with ordinary income?

Mr. Wilson. Ordinary income would be items typically under section 61 of the code. That would be wages, salaries, legal fees collected, interest income on your savings account, dividend income, collection of accounts receivable, rental income on your rental properties, and each item of ordinary income is taxed fully at the income tax brackets that you're in.

Distinguishing that for a capital gain, if it meets the holding period requirements, to be treated as a long-term capital gain, which goes from 6 months to a year, to 6 months to a year, depending, in various timeframes. Presently, and in 1980, 60 percent of the profit from a long-term capital gain was not subjected to tax. There was a preferential treatment there, it was called a tax preference, and only 40 percent of the profit from a long-term capital gain is subjecied to your income tax brackets.

Mr. DeWine. Now Mr. Wilson, let me move now specifically to the exhibit that is in front of you and specifically to that schedule D which you have, in general terms, been describing for us. I would like for you to look at Judge Claiborne's schedule D.

First of all, do you find a schedule D there?

Mr. Wilson. Yes. I do.

Mr. DeWine. All right. Can you tell us what this schedule D purports to depict, this specific one?

Mr. Wilson. Yes. There's an entry under long-term capital gain that shows an asset being acquired in 1978, it being sold in 1980, and it shows a sales price of $150,000 with a cost-basis of $250,000, producing a long-term capital loss of $109,000.

Mr. DeWine. Is this transaction, to the best of your knowledge, properly stated?

Mr. Wilson. No. It would not appear to be a valid entry.

Mr. DeWine. Now why would that be, sir?

Mr. WILSON. The primary thing that struck my eye right away was the cost basis of $250,000. I was not informed of any asset sales by the taxpayer in the year 1980, that would have a cost basis of $250,000. Typically, a person in a professional practice, capital assets primarily are nonexistents other than good will.

The 1978 tax return that you furnished to me, a copy of, of the taxpayer——

Mr. DEWINE. Which year, sir?

Mr. WILSON. 1978—indicated that the law library had been sold, and that other hard assets had either been abandoned or given away, and a loss taken on the hard asset.

In my years of experience, it would be highly unusual to find in a legal practice a cost-purchase basis in a practice of $250,000. If a practice is purchased, it probably was constructed in the form of a noncompete which had already been deducted over the years. So it appeared to be very unusual to me.

Mr. DEWINE. Looking at that specific schedule, do you see reflected anywhere on that schedule legal fee income of $87,911.83?

Mr. WILSON. No; I do not.

Mr. DEWINE. Mr. Wilson, based upon your review of schedule D and based upon your experience in this field, have you reached a conclusion about the correctness of schedule D?

Mr. WILSON. Based upon the information that I have seen, I would conclude that the schedule D is incorrect.

Senator RUDMAN. Mr. Chairman, because these copies are obviously not very good, I wonder if you could pose several questions to counsel or to the witness. I would like to know what the entry is. We cannot read the entry.

Mr. DEWINE. Yes; let me ask him. Mr. Wilson, can you determine from the copy in front of you what the entry is, or what it purports to be?

Mr. WILSON. I could not, but after reviewing information that you provided to me, it is to the effect that——

Mr. DEWINE. Now, excuse me. Information concerning that specific entry?

Mr. WILSON. This specific entry, yes.

Mr. DEWINE. What the writing actually said?

Mr. WILSON. What the writing actually says is accounts——

Mr. GOODMAN. I am going to object on hearsay, Mr. Chairman, unless in fact he can read it, or it was—it is a clear document somewhere, that everybody can see, rather than what this witness was told by somebody else who is reading the document.

The CHAIRMAN. The point raised by the Senator from New Hampshire is eminently correct. The copies that have been made available to the committee are really illegible. I have, however, in my hand, the original tax return for 1980, which purports to have been filed by Judge Claiborne. Mr. Goodman, would you like to examine it?

Mr. GOODMAN. Mr. Chairman, if it is the original, I have already seen it of course, and I have no objection to——

The CHAIRMAN. Then we will make it available——

Mr. DEWINE. Mr. Chairman, would I be able to hand that to the witness?

The CHAIRMAN. You can question from it, or show it to the witness.

Mr. DEWINE. For the record, Mr. Wilson, I am going to hand you what is marked on here as Government's exhibit No. 5. Mr. Wilson, could you tell me, for the record, what that is.

Mr. WILSON. Yes. The first word is an abbreviation for accounts, a-c-c-t-s.

Mr. DEWINE. Excuse me. Just let me—let's get it identified.

Mr. WILSON. Schedule D.

Mr. DEWINE. What have I just handed you?

Mr. WILSON. The original form 1040 for 1980, specifically schedule D.

Mr. DEWINE. For whom?

Mr. WILSON. Harry E. Claiborne.

Mr. DEWINE. Now let me direct your attention to schedule D. Is there a schedule D on there?

Mr. WILSON. Yes.

Mr. DEWINE. And what do you find when you look at schedule D?

Mr. WILSON. A description under line 1, that would read, Accounts—A-c-c-t-s—R-e-c, Receivable, for a law practice left upon LTR, letter of confirmation, to judicial, slash, U.S. court appoint., 1978. Accounts receivable for law practice left upon letter of confirmation to judicial U.S. court appointment, 1978.

Mr. DEWINE. Mr. Wilson, what figures appear below that?

Mr. WILSON. The figures appear: sales price, $150,000; cost basis, $250,000; long-term capital loss, $100,000.

Mr. DEWINE. Mr. Wilson, what is the significance to you, as an expert in this area, of the term accounts receivable, as it appears on schedule D?

Mr. WILSON. Accounts receivable, specifically under Code section 1221 is not a capital asset. It does not go on schedule D. Furthermore, in a legal practice, specifically this practice, the taxpayer has been on a cash basis method of accounting, wherein there would be no tax basis to the accounts receivable because they have never been taxed and there is no basis in them that was not on the accrual basis.

Mr. DEWINE. Mr. Chairman, I am prepared to move on with permission of the chairman.

The CHAIRMAN. I think that satisfies the committee as to the identification of this item.

Mr. DEWINE. Thank you, Mr. Chairman. Mr. Wilson, let me direct your attention to form No. 2119 in the exhibit that is before you.

Mr. WILSON. Yes.

Mr. DEWINE. First, could you tell us what is form 2119. What is the function or purpose of that form?

Mr. WILSON. Form 2119 has been designed to allow the taxpayer to determine, and to report the gain or a loss on the sale of the personal residence, and to determine, under Code section 1034, whether or not any of the gain can be deferred because a new residence was purchased.

Mr. DEWINE. Let me direct your attention to Judge Claiborne's form 2119. Is there a form on there?

Mr. **Wilson**. Yes.

Mr. **DeWine**. Have you had occasion to examine it?

Mr. **Wilson**. Yes; I have.

Mr. **DeWine**. And after reviewing this particular document, have you determined whether or not it is a correct document?

Mr. **Wilson**. It is incorrect.

Mr. **DeWine**. And before explaining to us why you came to that conclusion, what facts did you take into consideration in order to go through that particular document?

Mr. **Wilson**. I used information provided in the income tax return, the information provided on form 2119, and then there are two additional attached schedules of written information providing detailed analysis of the sales price of the residence, the commissions paid for the sale of the residence, and a detailed determination of the cost basis of the residence, together with the ultimate gain realized on the sale of the residence.

Mr. **DeWine**. So the facts that you used were supplied in the attachment directly behind that, is that correct?

Mr. **Wilson**. That's correct.

Mr. **DeWine**. And they are now contained in that exhibit?

Mr. **Wilson**. That is correct.

Mr. **DeWine**. Mr. Wilson, I am going to hand you what has been marked as House exhibit No. 38. I would ask you to——

The **Chairman**. No. 3?

Mr. **DeWine**. Thirty-eight, Mr. Chairman.

The **Chairman**. Thirty-eight.

Mr. **DeWine**. And I believe members of the committee have a copy of that.

Mr. Wilson, could you tell me what that particular document is.

Mr. **Wilson**. That is a form 2119 for the sale or exchange of a principal residence for 1980, for Harry E. Claiborne, prepared by myself using the information submitted in the original income tax return, but prepared correctly, to report the gain or loss on the sale of the residence.

Mr. **DeWine**. Who prepared this document?

Mr. **Wilson**. I did.

Mr. **DeWine**. And where did you get the facts to prepare the document?

Mr. **Wilson**. From the form 1040 that you submitted to me and that I have laying in front of me.

Mr. **DeWine**. Which would include the attachments?

Mr. **Wilson**. Yes;. the two attached schedules.

Mr. **DeWine**. Did you reach a conclusion—excuse me just a moment, at this point, Mr. Chairman, to move the admission into evidence of House exhibit No. 38.

The **Chairman**. Mr. Goodman.

Mr. **Goodman**. To which we would object, Mr. Chairman, as being beyond the scope of the articles.

Mr. **DeWine**. May I comment on that, Mr. Chairman.

The **Chairman**. If you have a response.

Mr. **DeWine**. Yes; I do. I think it is clearly not beyond the scope of the articles. It is incumbent upon the House managers to verify, and to argue the particular matters at hand.

There was no specific amount alleged in the articles as to how far off Judge Claiborne was. What was alleged in the articles was the specific amount that he has claimed his income was in 1979 and in 1980. What we are doing is to show, by this particular evidence, that he has gone far beyond that. That he is very, very far off, and this certainly adds credence to that argument.

It is our intention, Mr. Chairman, to show—in this whole line of questioning it is our intent to show that the form was so inartfully put together, and was so completely far afield of what the judge had to know—and the evidence will show he did know what his true income was, and we are leading up to that final point, and this is a very important part, to show that.

The CHAIRMAN. In article II, it stated that, "Whereas he then and there well knew and believed he received and failed to report substantial income in addition to that stated in the return, to the violation of section 7206(1) of title 26, United States Code." It would appear that this would be within the scope of that article and therefore, the objection is overruled.

Mr. DEWINE. Thank you, Mr. Chairman.

[Whereupon, House exhibit No. 38 was received in evidence.]

Mr. DEWINE. Mr. Wilson, based upon your review of those two documents, did you form an opinion, \or of that particular document, the 1040, and the 2119 as filed by the judge, did you reach an opinion as to whether or not that was an accurate document?

Mr. WILSON. It was inaccurate.

Mr. DEWINE. All right. You have in front of you I believe what has been marked House exhibit 38, which you have already testified to. You also have in front of you the original form 2119 as filed by the judge. Is that correct?

Mr. WILSON. Yes; that is correct.

Mr. DEWINE. All right. Could you please go down through that and explain to us what is wrong with the one that was filed by the judge.

Mr. WILSON. Yes. Section 1034, that talks about the deferral of the gain on the sale of the residence, states that, "To the extent you do not reinvest your sales proceeds into a new home, that the gain is taxed."

In other words, to the extent that you put the cash in your pocket, you have to pay tax on the gain. The facts indicated in the attached schedules show that the residence was sold for $725,000, that there were commissions of $47,388, so that there was a net sales price of $677,612. The information submitted shows that there was a cost basis to the residence of $362,800, or that there was a gain realized of $314,812. The information also shows that of the $677,612 received, only $285,000 was spent on the purchase of a new residence.

Mr. DEWINE. And what is the significance of that?

Mr. WILSON. When you compare the $677,000 received, as to the amount spent on the new residence, there was a total freeing up of funds. We did not spend on the new residence what we had sold the old residence for, and Code section 1034 says, to the extent you don't spend it you pay tax on it. And therefore there is a tax, because of the reduction in the purchase price, and because I—we kept the funds, the taxpayer kept the funds, there is a gain of $314,812.

Now there's a statutory exclusion available to the taxpayer for being over age 55 under Code section 121, that in 1980 said the first $100,000 of gain was not taxable, even if you did not reinvest it.

So subtracting the $100,000 of statutory exclusion from the total gain of $314,812, there is a net long-term capital gain of $214,812, that was not reported and carried to schedule D for tax purposes.

Now I could go down line by line, if you desire, and report that, but that is the essence of the form 2119.

Mr. DEWINE. The bottom line is what, on that particular form?

Mr. WILSON. $214,812 on line 18.

Mr. DEWINE. And what is that?

Mr. WILSON. Which is the recognizable gain, where line 18 specifically says carry it to schedule D.

Mr. DEWINE. How does that compare with line 18 on the judge's return?

Mr. WILSON. line 18 on form 2119 of the original return has a zero in that space.

Mr. DEWINE. The judge had zero, and it should have been $214,812?

Mr. WILSON. That's correct.

Mr. DEWINE. And you carry that forward to where?

Mr. WILSON. Schedule D. There is a specific line on schedule D to report the gain from form 2119, under the part two, long-term capital gain or losses.

Mr. DEWINE. Mr. Wilson, I am going to now hand you what has been marked as House exhibit No. 37.

Mr. WILSON. Yes.

Mr. DEWINE. Mr. Wilson, what is House exhibit No. 37?

Mr. WILSON. It is a photocopy of the form 1040 for Harry E. Claiborne for 1980, with marginal entries on the righthand side, where I have recomputed the preparation of that tax return showing what the return, if properly prepared, would have looked like.

Mr. DEWINE. So on House exhibit No. 37, the figures that we will find on the far righthand side of the pages are your figures?

Mr. WILSON. That is correct.

Mr. DEWINE. And the other figures are from the original document as filed by Judge Claiborne in 1980?

Mr. WILSON. That is correct.

Mr. DEWINE. Or on taxable year 1980?

Mr. WILSON. Yes.

Mr. DEWINE. Mr. Wilson, you have testified in front of us today about this particular form. You have told us that the legal fees were not reported, that there is no schedule C, and you have told us about the error in schedule D, the mistake in schedule D.

You have told us also about the misstatement, or lack of statement of the income in form 2119.

Taking all these things into consideration, and your review of this particular case, and your expertise, have you been able to recompute what Judge Harry Claiborne's true income, taxable income, and tax was, for the year 1980?

Mr. WILSON. Yes. I have.

Mr. DeWine. I am going to hand you what has been marked as House exhibit No. 39 and I would ask you to identify that for us as well.

Mr. Wilson. House exhibit No. 39 is a schedule prepared by myself, which is a transcript from the form 1040 that has four columns.

Column No. 1 shows the tax return as originally filed for 1980.

Column No. 2 is headed up, "Properly Prepared."

Column No. 3 indicates the difference between column No. 1 and column No. 2.

And column No. 4 indicates percentages of information reported.

Mr. DeWine. Now in regard, Mr. Wilson, both to House exhibit 37 and to House exhibit 39, where did you get the figures that you made these computations?

Mr. Wilson. The information was taken from the form 1040, except for the item reported as income from professional fees, which you told me to assume was $87,912.

Mr. DeWine. Did you personally prepare both of these forms yourself?

Mr. Wilson. Yes, I did.

Mr. DeWine. At this time, Mr. Chairman, I would move into evidence our exhibit No. 39 and exhibit No. 37.

Mr. Goodman. To which we have no objection.

The Chairman. It will be admitted.

Mr. DeWine. Thank you, Mr. Chairman.

[Whereupon, House exhibit No. 37 and House exhibit No. 39 were received in evidence.]

Mr. DeWine. Mr. Wilson, I would direct your attention to what has been marked as House exhibit No. 39. The members of the committee have that I believe in front of them.

I would like for you to explain to us what exactly you did on this form and what is the significance of this particular summary.

Mr. Wilson. The form summarizes the information from the tax return, as filed, as compared to the tax return as properly prepared. It indicates that wages of $54,500 was reported and in fact wages of $54,500 was the amount that the form W-2 indicated and that was proper. It indicates that interest income was $2,751, and that amount I took from the form 1040 without any additional verification.

The original form 1040 showed legal fees received of zero. You told me to assume that it was $87,912, so there was a difference of $87,912 of legal fees not being shown on the form 1040.

Capital gain or loss as reported had a $3,000 capital loss because of limitations. The property capital gain or loss from the sale of the residence, after the 60-percent exclusion, was $85,925, reportable as ordinary income.

Mr. DeWine. That is after that exclusion?

Mr. Wilson. That is after the exclusion which ends up in a difference, really, to the return, of $88,925.

Mr. DeWine. That the judge would have to have paid tax on?

Mr. Wilson. Yes.

Mr. DeWine. All right.

Mr. WILSON. The total gross income, as reported, was $54,251. A proper determination was $231,088 of gross income, or a difference of $176,837.

Mr. DEWINE. What is the 23.5 percent?

Mr. WILSON. That indicates that the amount reported, $54,251 was 23½ percent of the amount that should have been reported, $231,088.

Mr. DEWINE. All right. Could you go down to the line which reads, "Adjustments To Gross Income."

Mr. WILSON. Yes. That is primarily alimony in the amount of $21,000, and a forfeiture penalty on a withdrawal from a savings account of $140.00. Those amounts were the same in both columns, which would leave adjusted gross income of $33,111, as reported.

Properly prepared, $209,948, or a difference, again, of $176,837.

Mr. DEWINE. And what is the 15.8?

Mr. WILSON. Again, the $33,000 is 15.8 percent of the proper amount of $209,000, the adjusted gross income. Itemized deductions had to be adjusted very slightly for two statutory rules. The medical expense had to be adjusted because the gross income changed and the sales tax deduction had to be adjusted because the gross income changed. The exemptions remain the same, $1,000, so that taxable income was, as reported, $10,050.

Mr. DEWINE. How much, sir?

Mr. WILSON. Ten thousand, zero, five, zero—$10,050. Actual taxable income, as computed: $186,983, or an understatement, again, of $176,933; 5.4 percent of the taxable income was reported.

The next line is a computation of the Federal income tax. The return, as filed, shows a Federal income tax of $1,403. A proper computation was $98,164, or a difference of $96,761. There was a residential energy credit of $300 for insulation in the residence. That remained the same.

So that the net tax, liability for the year, as reported, was $1,103. Properly computed was $97,864, or a difference, again, of $96,761.

The tax, as reported, was 1.1 percent of the tax liability as computed. The actual tax paid in, as claimed on the return, was $22,030. That was incorrect. Actual tax paid in was $45,348, the difference between $23,318. So that the net result was, instead of receiving a refund of $20,927, the taxpayer should have written a check for $52,516, or a difference of $73,443.

Mr. DEWINE. Now Mr. Wilson, before you got to the credits, what figure on here is the actual tax liability?

Mr. WILSON. The actual tax liability is called net tax, $1,103, as compared to $97,864, a difference of $96,761.

Mr. DEWINE. So his net tax on what, the return actually filed, was $1,403?

Mr. WILSON. 1,103, after the energy credit.

Mr. DEWINE. I am sorry. And the actual, by your computation the tax should have been what?

Mr. WILSON. $97,864.

Mr. DEWINE. Mr. Wilson, based upon your review of Judge Claiborne's 1980 income tax return, based upon your expertise in the area, and your experience, and the work that you have just testified to in regard to recomputing his actual tax due, do you have an opinion as to the manner in which this return was prepared?

Mr. WILSON. Yes.

Mr. DEWINE. And what is that opinion?

Mr. WILSON. The return is grossly incorrect.

Mr. DEWINE. All right. And what do you base that upon?

Mr. WILSON. The fact that the taxpayer filed an extension request indicating that the tax liability was in the, estimated to be in the range of $42,000. That the taxpayer had received $54,500 of wages; had received $87,912 of professional fees; had sold a residence for $725,000 and incurred a reportable gain of $214,000.

With all those facts in mind, and to come to the conclusion that the tax was $1,103, indicates, to me, a total inapplication of the tax laws.

Mr. DEWINE. Thank you very much. I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. Goodman, before you start cross examination, Mr. McConnell, the Senator from Kentucky, has inquired of Mr. Wilson: What is the general practice of IRS when confronted by a faulty 1040? Do they not usually handle such underreported returns administratively?

Mr. WILSON. That is a very difficult question. First of all, a 1040 such as this, on the surface, would not be discovered at the computer center. The initial matching of information against a 1040 in the computer center will go through a mathematical checking, but there is no qualitative review of the information.

The next step, if, after going through a manual survey, selection of returns—and this return would be selected because of unusual items—issues that perhaps my eyes saw, or another experienced reviewer saw, were selected for audit—the return would be sent out for field audit.

I cannot specifically speculate, because I've had both instances. I've had special agents come out to visit individuals when it appeared that information was incorrect, in this magnitude, and I've had instances where a normal field agent contacted the taxpayer to go over issues such as this. So, I've had both instances.

The CHAIRMAN. Mr. McConnell further asks: In the light of your experience, what criteria does the IRS, or the U.S. attorney use, when deciding to treat a faulty return with criminal prosecution rather than through administrative procedures?

Mr. WILSON. The criteria varies widely. There is a threshold, that if there is a 25-percent understatement of gross income, then clearly the 3-year statute of limitations does not apply, and there is a 6-year civil statute of limitations.

And so once you get above the threshold of a 25-percent understatement you normally have the ears of the special agents division. If the understatement is under 25 percent, they—again it depends on the particular issues, and the reasonableness of the complexity of the issue.

If this were a subchapter C issue with a merger, or a reorganization with highly technical issues, there could be one attitude displayed. In a case where we are talking about issues that I learned in taxation 201, that a capital gain is a capital gain; that fee income is ordinary income; and that the sale of a residence produces a gain unless you reinvest it, I think they certainly would consider using the special agent division.

The CHAIRMAN. Mr. Rudman asks: On the return, as filed, form 2119, line 4, the taxpayer listed $410,188 as expenses of the sale. Do you know where that came from?

Mr. WILSON. Yes. That is a combination of the commissions of sale, $47,000, plus the basis of the property of $362,000. Those two numbers exactly add up to the cost of sale, as reported.

The CHAIRMAN. The Senator from New Mexico, Mr. Bingaman, asks: In your expert opinion, does this 1980 return support a conclusion that the preparer of that return willfully understated his income in order to avoid paying taxes?

Mr. WILSON. It's tough to speak to the willfulness. The preparer clearly understated the tax. I don't know the individuals involved. It's tough to speak to the willfulness. This is certainly one of the worst returns I have seen prepared.

The CHAIRMAN. Senator Pressler has a question. When is criminal prosecution usually triggered? Is not a penalty usually given instead of criminal prosecution? What is the standard?

Mr. WILSON. There is no standard. Regional counsel in the Department of Justice, staff attorneys, will pick cases on many issues. They certainly do not disclose the criteria that they use, and it really varies from individual to individual. So there's no clear standard between the penalty for the understatement of tax, and the pursuit of criminal proceedings. Anything more, I would be speculating.

The CHAIRMAN. Mr. Goodman.

Mr. GOODMAN. Thank you.

CROSS EXAMINATION

Mr. GOODMAN. Mr Wilson, I am Oscar Goodman and I represent Judge Claiborne.

Mr. WILSON. Yes, sir.

Mr. GOODMAN. Your education not only encompassed training as far as accountancy is concerned on an undergraduate level, but you also took business courses at the university for a master's, is that correct?

Mr. WILSON. That's correct.

Mr. GOODMAN. And at the time that you were studying, was it with the expectation that you were going to be a certified public accountant?

Mr. WILSON. Yes.

Mr. GOODMAN. Does a certified public accountant have to pass any exams before receiving their license?

Mr. WILSON. Yes, sir.

Mr. GOODMAN. What exams does a certified public accountant have to take?

Mr. WILSON. There is a nationally administered 2½-day exam covering four areas: auditing, problem-solving which is taxation, theory, and commercial law. The standards are that you must attain a passing mark of 75 percent on each section of the examination to pass the CPA exam. Each State then has licensing requirements for so many years of experience before they actually grant you the certificate.

Mr. GOODMAN. All right. And when you get that license, does it permit you to represent yourself to the public as being a certified public accountant?

Mr. WILSON. Yes. It does.

Mr. GOODMAN. Is there a difference between a certified public accountant and an accountant?

Mr. WILSON. Yes. In terms of licensing.

Mr. GOODMAN. All right. What is that?

Mr. WILSON. A public accountant has not passed the CPA exam. Probably—I can't speak for every State—but most States, today, is licensed by that State as continuing education requirements, but, in most instances, has not passed the CPA exam.

Mr. GOODMAN. What does somebody have to do as far as licensing, or training, in order to hold themselves out as a public accountant?

Mr. WILSON. I can't specifically speak to that. I have not studied that area of the law in the various States. I really can't answer that.

Mr. GOODMAN. Do you know whether or not somebody could advertise in the phone book, in the yellow pages, as being a public accountant, without having any particular type of degree in the area of accounting?

Mr. WILSON. No. I do not know.

Mr. GOODMAN. All right. Do you know whether or not somebody could hold themselves out as an accountant, without any training as far as formal training in the preparation of tax returns?

Mr. WILSON. I do not know.

Mr. GOODMAN. Do you know anything about the individual who prepared the returns in this particular situation?

Mr. Wilson. No. I do not.

Mr. GOODMAN. Was anything told you about him?

Mr. WILSON. No, sir.

Mr. GOODMAN. All right. Do you know whether he was a public accountant?

Mr. WILSON. No, sir.

Mr. GOODMAN. Do you know whether he was a CPA?

Mr. WILSON. Only from reading the signature of the return where it did not indicate, where the preparer signed it, that it was a CPA, but that's my only——

Mr. GOODMAN. In your experience as an expert in the filing of tax returns, do you know whether or not persons who have no degrees, on occasion, prepare returns for others?

Mr. WILSON. Yes. They do.

Mr. GOODMAN. And there is nothing illegal about that, is there?

Mr. WILSON. I do not believe there is; no.

Mr. GOODMAN. All right. And many times, those persons who prepare returns are in a general type of office setting where they hold themselves out as being "jacks of all trades," is that not right?

Mr. WILSON. I would have to speak to my own community, from a reference point. I don't have that in South Bend, Indiana, but——

Mr. GOODMAN. All right. Are the persons who hold themselves out as dealing in real estate, doing tax returns, having a notary public in their office—are you familiar with that type of person?

Mr. WILSON. I'm really not, not in my locale.

Mr. GOODMAN. All right. Because the persons with whom you are familiar, and in your locale, are mostly CPA's, are they not?

Mr. WILSON. Are public accountants who primarily conduct business as a public accountant.

Mr. GOODMAN. Persons that a particular State has to license?

Mr. WILSON. Yes.

Mr. GOODMAN. And that would be the State of Indiana in your case.

Mr. WILSON. Yes, sir.

Mr. GOODMAN. All right. You could not have the type of clientele which you have, unless you had the educational background, is that not correct?

Mr. WILSON. I do not know if it is the education, or not. Certainly, it gives you a threshold to get started, but I think it is taking an interest in the client, I think it is being concerned, doing good work, and that's what causes you to get and retain clients.

Mr. GOODMAN. So there are two aspects, if I understand you correctly. It is your pleasing personality as well as your expertise?

Mr. WILSON. I am not sure you have to be pleasing, but you have to be interested.

Mr. GOODMAN. OK. But it is the personal relationship between yourself and your client, which is as important, perhaps initially, as the end work product which you compose in your accountant obligations, isn't that right?

Mr. WILSON. It's just as important, but not more important.

Mr. GOODMAN. All right. Now you have seen the original of Judge Claiborne's 1980 tax return. It is in front of you, is it not?

Mr. Wilson. That's correct.

Mr. GOODMAN. And that original is unusual in several respects other than the entries contained thereon, is it not? May I approach the——

Mr. WILSON. I think you would have to specifically point out to me——

Mr. GOODMAN. May I approach the witness, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. GOODMAN. Thank you. Well, looking at the first page of the 1040——

Mr. WILSON. Yes.

Mr. GOODMAN [continuing]. It is in pencil, is it not?

Mr. WILSON. That's correct.

Mr. GOODMAN. It is in pencil in its entirety, as far as the first page?

Mr. WILSON. First page; yes.

Mr. GOODMAN. Do you know who prepared that?

Mr. WILSON. No. I do not.

Mr. GOODMAN. Now the back side of the first page is partly in pencil, is it not?

Mr. WILSON. The numbers are in pencil, generally speaking, yes.

Mr. GOODMAN. But there are some numbers that are in ink, is that not correct?

Mr. **Wilson**. Yes. The Social Security numbers and the Federal identification numbers of the preparer.

Mr. **Goodman**. All right. And are there any other numbers that are in ink?

Mr. **Wilson**. It would appear only items that were entered by the service center when they were processing the return are in a crayon color.

Mr. **Goodman**. And as far as the third page, and throughout the document, it appears to be all in pencil, does it not?

Mr. **Wilson**. Yes, sir.

Mr. **Goodman**. I call your attention to schedule D, the particular area of the return that you read to this honorable committee, and that is in pencil as well, is it not?

Mr. **Wilson**. Yes, sir.

Mr. **Goodman**. And you told us, did you not, on direct examination, that it is appropriate to include as accounts receivable items on schedule D?

Mr. **Wilson**. I did not.

Mr. **Goodman**. That was not your testimony?

Mr. **Wilson**. No, sir.

Mr. **Goodman**. All right. Now this schedule D says, "Accounts Rec. for law practice left upon——

Mr. **Wilson**. Letter, letter of——

Mr. **Goodman** [continuing]. Letter of confirmation to judicial/United States court appointment." Right?

Mr. **Wilson**. Yes, sir.

Mr. **Goodman**. And it has the date, 1978, correct?

Mr. **Wilson**. Yes, sir.

Mr. **Goodman**. You find this to be very unusual, do you not?

Mr. **Wilson**. Yes, sir.

Mr. **Goodman**. And you said when you first looked at schedule D, the first thing you saw that was unusual were the figures which were contained therein, of 150,000, 250,000, and 100,000, is that right, in part two?

Mr. **Wilson**. Yes, sir

Mr. **Goodman**. Now you said that struck your eye?

Mr. **Wilson**. Yes, sir.

Mr. **Goodman**. Have you ever seen a return that had an arrow going down the side of it—as a matter of fact on both sides—with the direction, "Type here?"

Mr. **Wilson**. No, sir.

Mr. **Goodman**. Now is that not a return, and if one were to file it, which would be a red flag?

Mr. **Wilson**. Not the way that returns are processed today in the service centers.

Mr. **Goodman**. Well, is it not a fact, sir, that returns can be selected for personal inspection by some auditor with the IRS?

Mr. **Wilson**. They go through a DF function of selection which is a statistical survey based upon information, mathematical information presented in the tax return to determine the probability of determining revenue availability on audit, and the qualitative alpha information submitted is not reviewed until a return has already been selected for audit.

Mr. GOODMAN. All right. Now if somebody were to look at that return under audit, would it not raise their eyebrows, if they were an IRS employee?

Mr. WILSON. I can't speak for that.

Mr. CHABRAJA. Mr. Chairman, I think Mr. Goodman is speculating about the Internal Revenue Service. I think the issue is whether it raised Judge Claiborne's eyebrows.

Mr. GOODMAN. I would submit, Mr. Chairman, that what we are talking about here is the reasonableness of the filing of the return within the context of Judge Claiborne's state of mind, and if the return is so unusual, as I suggest it is, nobody who is trying to defraud the United States of America would sign it with that intent.

The CHAIRMAN. I think the direct examination was very broad and members also asked some questions with respect to practice, and so we will overrule the objection.

Mr. GOODMAN. Isn't it the type of return, Mr. Wilson, that an IRS auditor would raise their eyebrows at?

Mr. WILSON. I can think of both areas of IRS auditors. I know individuals who would raise the question and I know individuals who would not raise the question.

Mr. GOODMAN. Well, how did you describe the return? Wasn't your language that the return looks grossly incorrect?

Mr. WILSON. To me, as a professional, it does.

Mr. GOODMAN. All right. And are those persons who worked for the IRS in the review section professionals, to your knowledge?

Mr. WILSON. I can't speak directly to that. I speak from my experience to individuals that I have worked with in the Internal Revenue Service. As in any organization, there are all levels of competence within an organization.

Mr. GOODMAN. You would hope, though, that if you were the Chairman of the IRS, that those who would work for you would raise their eyebrows at this?

Mr. WILSON. I'm sure he's moving in the right direction.

Mr. GOODMAN. Now, at the time that somebody in the IRS would determine that there was something wrong with the report, from the revenue side, what is your experience would happen?

Mr. WILSON. My experience would be that this would be referred to the Special Agent Division.

Mr. GOODMAN. All right. And the special agent, as distinct from the revenue, is the Criminal Investigation Division?

Mr. WILSON. Yes, sir.

Mr. GOODMAN. Even though the amount, the percentage which is reported is under 25 percent, which was the figure you gave us on your direct examination?

Mr. WILSON. Yes.

Mr. GOODMAN. It would be referred to Criminal because——

Mr. WILSON [continuing]. Of the magnitude of the dollar amounts.

Mr. GOODMAN. And notwithstanding the fact it was less than 25 percent?

Mr. WILSON. The amount reported was less than 25 percent. The amount not reported was 77 percent.

Mr. GOODMAN. All right. And that would go to the Criminal Division?

Mr. WILSON. Yes.

Mr. GOODMAN. Now, in your experience, what would happen when it was given to a criminal investigating officer?

Mr. WILSON. He would contact the taxpayer——

Mr. GOODMAN. Right.

Mr. WILSON. The taxpayer would contact me, and——

Mr. GOODMAN. You, as his preparer.

Mr. WILSON. Probably not. I've never had an experience of being contacted as preparer of a return, but as a referral from somebody else. The taxpayer would contact me and I would say "We'd better get legal counsel aboard."

Mr. GOODMAN. OK. And you would then hire your lawyer because you know that the IRS is concerned about the quality of the return?

Mr. WILSON. Not only that. There is specific laws that I, not being a lawyer, am not qualified to practice in the criminal tax field. I would certainly work the tax law side of it, but not the criminal law side. I would recommend getting a qualified lawyer aboard instantly.

Mr. GOODMAN. And the qualified lawyer and yourself would work together, as far as the administrative process is concerned; isn't that right?

Mr. WILSON. Correct.

Mr. GOODMAN. And what would happen after the taxpayer hired the lawyer, hired you, and was advised by the criminal investigating agent that there was a problem?

Would you sit down with him?

Mr. WILSON. Who is "him"?

Mr. GOODMAN. With the criminal investigating agent.

Mr. WILSON. The "quarterback" normally is the attorney at that point in the proceedings. The attorney would have meetings with the staff attorney from the Justice Department.

Mr. GOODMAN. Where would that take place? In South Bend?

Mr. WILSON. It could, South Bend, IN. It could even get to Washington, DC.

Mr. GOODMAN. Well, at first it would be at the local level, would it not?

Mr. WILSON. Yes.

Mr. GOODMAN. And then the next step, if there was a continued problem and the matter was not resolved, it would go to the regional level; isn't that right?

Mr. WILSON. That's correct. And eventually it has to be either recommended or not recommended for prosecution.

Mr. GOODMAN. Right. But there would be a meeting, after the meeting was at the local level in the IRS office, with somebody at the regional level, where the attorney and the accountant and the taxpayer would be invited to be able to explain the problems with the return if they so chose; isn't that right?

Mr. WILSON. That's correct.

Mr. Goodman And then, after they got through with the regional level, they would be given another opportunity, would they not? They would be able to go back to Washington, DC, and have a meeting; isn't that right?

Mr. WILSON. Correct.

Mr. Goodman. And then, after that, if they didn't have their problem resolved, they would be able to have a conference at the Justice Department; isn't that right?

Mr. Wilson. Yes, sir.

Mr. Goodman. And isn't it a fact that even after they had a conference at the Justice Department, the ordinary citizen in this country would be able to have a discussion with the U.S. attorney before they were indicted in order to see that the matter was resolved; isn't that correct?

Mr. Chabraja. Objection, if the Chair please. I don't think there is anything in this witness' testimony to indicate any expertise with respect to the U.S. attorney's Office or the Department of Justice as to being afforded any administrative courtesies beyond——

Mr. Goodman. Mr. Chairman, I submit that during his direct examination he testified that he had an expertise as far as working with administrative bodies is concerned, the appellate process, and pretrial aspects, as far as representing taxpayers.

Mr. Wilson. That does not include the criminal section of the law.

Mr. Goodman. Well, maybe I can ask another question, with the Chair's permission.

The Chairman. The witness has already answered the question.

Mr. Wilson. I misspoke. I'm sorry.

The Chairman. If you know, I think it's proper to answer.

Mr. Wilson. I do not hold myself out to be an expert in the criminal law aspects income tax evasion.

Mr. Goodman. Mr. Wilson, is there anything you told this honorable committee that you believe is incorrect?

Mr Wilson. No, sir.

Mr. Goodman. OK. Now, were any documents shown to you in preparation for your expert testimony which were represented to have been given by Judge Claiborne to his tax preparer in anticipation of the tax preparer preparing the return?

Mr. Wilson. I do not beleive so, no.

Mr. Goodman. I would show you what has been previously marked in the court proceedings as defendant's exhibit No. 41, which we listed in our list of exhibits, Mr. Chairman. It purports to be a copy of several original yellow sheets of paper setting forth certain information. I would like to show the witness this at this time, that particular document.

The Chairman. Has that been put into evidence?

Mr. Goodman. It has not been tendered, Mr. Chairman, into evidence. It has been referenced as one of the exhibits which would be relied upon in our pretrial statement. It is part of the original court file, which I believe has been represented as being a part of this record.

The Chairman. Is it from the first trial or the second trial?

Mr. Goodman. The 41 designation would be the second trial.

Mr. Chabraja. May I see the document?

The Chairman. Has counsel for the managers seen it?

Mr. Chabraja. Mr. Chairman, may I interpose an objection, not that I've seen the document?

The Chairman. On what grounds do you object?

Mr. Chabraja. The document is not in evidence. I don't suspect that Mr. Goodman is going to attempt to authenticate and place this document in evidence with this witness, after he has testified he has never seen anything like that. I don't know what mischief he can be up to in showing him documents that he's never seen before, that he can't authenticate and that aren't in evidence here today.

Mr. Goodman. Mr. Chairman, with the Chair's permission, what I would like to do is tender this to the witness for purposes of his testimony, and if I cannot get it admitted, then, of course, it would be subject to a motion to strike.

The Chairman. Is it part of the record, of the previous trial?

Mr. Goodman. Yes, it is. It was put into evidence, Mr. Chairman.

The Chairman. And do the Managers agree that it was part of the record from——

Mr. Goodman. No. At the trial it was placed into evidence. That's the only representation that I can make.

Mr. Chabraja. I agree with that.

Mr. Goodman. I'm just asking the witness whether or not——

The Chairman. I will permit it.

Mr. Goodman. May I approach him, please?

The Chairman. Yes.

Mr. Goodman. Mr. Wilson, I will show you what has been referred to in the prior case as defendant's exhibit No. 41 and ask whether or not you saw this document in a form which I will represent to you was originally on yellow, legal-sized paper.

Mr. Wilson. No, sir.

Mr. Goodman. At this time I would like to show you what was introduced at the second trial as Exhibit B, purporting to be a financial disclosure statement of the Honorable Harry E. Claiborne, with the Judicial Ethics Commission, the copy not being as clear as the original, but having been filed on May the 14th of 1981, and ask whether or not——

Mr. Chabraja. If the Chair please, the same objection. I won't belabor the record, other than it's so far beyond the scope of direct.

Mr. Goodman. I would suggest to the court that it is pertinent if, in fact, he saw it, because it represents——

The Chairman. You may ask him.

Mr. Goodman. Thank you. Mr. Wilson, have you seen this document?

Mr. Wilson. No, sir.

Mr. Goodman. Mr. Wilson, in anticipation of your testimony here today, did you have the occasion to read any testimony from any prior proceedings, be they grand jury proceedings or court proceedings?

Mr. Wilson. Yes, sir.

Mr. Goodman. Whose testimony did you read?

Mr. Wilson. The testimony of Mr. Dias before Judge Hoffman. I don't know what proceeding that was.

Mr. Goodman. Mr. Dias was the gentleman who was the Government's expert in one of the trials, is that right?

Mr. Wilson. Yes.

Mr. Goodman. All right. Did you read the testimony of one Jerry Watson?

Mr. Wilson. I don't believe so, no, sir.

Mr. Goodman. Do you know who Jerry Watson is?

Mr. Wilson. No, sir.

Mr. Goodman. Do you know who prepared this return? By "this return," for purposes of the record, exhibit No. 37.

Mr. Wilson. Creative Tax Planning.

Mr. Goodman. Well, Creative Tax Planning doesn't prepare returns, does it?

Mr. Wilson. I can't read the signature, sir.

Mr. Goodman. All right. There is somebody who signed the return, isn't that right?

Mr. Wilson. Yes, but I can't read the signature.

Mr. Goodman. It also says, besides Creative Tax Planning, for the entire record it says "Lamb-Watson Consulting," does it not?

Mr. Wilson. Yes, it does. That name did not come up, sir, so I——

Mr. Goodman. It did?

Mr. Wilson. It did not.

Mr. Goodman. Do you know who prepared the return?

Mr. Wilson. No, sir, I don't.

Mr. Goodman. Do you know upon what information the return was prepared?

Mr. Wilson. No, sir, I don't.

Mr. Goodman. So you don't have any background as to what took place which resulted in the ultimate filing of the return, do you?

Mr. Wilson. No, sir.

Mr. Goodman. All you're able to tell us as an expert is that if you had the information, based on the hypothetical provided to you by the House of Representatives, you would have prepared the return differently?

Mr. Wilson. Yes, sir.

Mr. Chabraja. Mr. Chairman, I would like to interpose an objection. I'm sorry it's belated, but I move to strike. Mr. Goodman misstated the record. He said that the witness' testimony was based on a hypothetical provided him by the House of Representatives. That's not so. He was provided with the tax return, as he testified, and one assumption which is borne out by the evidence in this case, that was that in the year 1980 there was some $88,000 fee income. Mr. Goodman misspoke in that statement and the response should be stricken from this record.

The Chairman. Mr. Goodman?

Mr. Goodman. In part, Mr. Chairman, the information was a hypothetical, on the basis that it was given as a part of the question and part of the witness' testimony, the proposition that Judge Claiborne received $88,000 and that it nowhere else is in evidence. So I don't believe I misspoke myself.

Mr. Chabraja. Mr. Goodman is sadly mistaken, if the Chair please. There are documents in evidence that demonstrate that he received 87,800-some-odd dollars in legal fee income in 1980, and the Chair, in his ruling of September 10, took into evidence—and we'll formally read very shortly—admissions of Judge Claiborne to that effect.

I don't think Mr. Goodman, in good conscience, is going to stand here and say that that fact is in dispute.

The CHAIRMAN. It seems to me, Mr. Chabraja, that you'll have an opportunity on redirect, if you need to do it, to clear up any misapprehension that may occur. So we will deny your motion to strike at this point.

Mr. GOODMAN. Mr. Wilson, is it the taxpayer's responsibility to provide to the tax preparer information which is accurate when a return is to be filed?

Mr. WILSON. Yes, sir.

Mr. GOODMAN. And if Judge Claiborne advised the preparer of the tax that he, in fact, received some $88,500 in legal fees earned from his days when he was in private practice, he would have overstated to his preparer that necessary item which should have been on the return; is that correct?

Mr. WILSON. Are you comparing that to 87,800-and-some dollars?

Mr. GOODMAN. Correct.

Mr. WILSON. Yes.

Mr. GOODMAN. And if Judge Claiborne provided to his tax preparer all of the information concerning the sale of his property, which is included on the tax return, in specific and accurate detail, Judge Claiborne would have done what's expected of him as a taxpayer, would he not?

Mr. WILSON. Not totally, no, sir.

Mr. GOODMAN. Well, as far as that aspect was concerned, in providing information to the preparer, all the taxpayer is expected to do is to make a total disclosure, honestly, to his preparer; isn't that right?

Mr. WILSON. Initially, yes, sir.

Mr. GOODMAN. All right. Let me ask you this, Mr. Wilson. You have about, what, 25 clients who you represent now on an annual basis?

Mr. WILSON. Specific responsibility, yes.

Mr. GOODMAN. And they're good friends of yours?

Mr. WILSON. Friends, not necessarily good friends, but——

Mr. GOODMAN. Well, friends that you've developed a relation with, business associates——

Mr. WILSON. Business associates that I've developed a relationship with, yes.

Mr. GOODMAN. Persons that rely upon you, right?

Mr. WILSON. Yes, sir.

Mr. GOODMAN. And they give you information so you can prepare their returns, right?

Mr. WILSON. Yes, sir.

Mr. GOODMAN. And they get the returns from you and they sign them, don't they?

Mr. WILSON. Yes, sir

Mr. GOODMAN. And you send them in, don't you?

Mr. WILSON. No, sir. We normally have a meeting, and the first question that normally is asked is "How much do I owe"?

Mr. GOODMAN. That's what the taxpayer ordinarily asks you because that's what he's interested in, what did you save him?

Mr. WILSON. I say either you owe so much or you have a refund coming. Then they say, "Well, how much is the refund?"

Mr. GOODMAN. OK. And that's the way it ordinarily goes after the taxpayer, who is paying you, I hope, what you deserve——

Mr. WILSON. But I have been challenged, sir, where taxpayers have said, "Well, the result just doesn't seem congruous with the information I provided you. Are you sure you interpreted my information properly? We'd better go back over that information."

Mr. GOODMAN. So, in other words, you have certain of your customers, your clients, who will question you; is that right?

Mr. WILSON. Yes, sir.

Mr. GOODMAN. And you have others who will rely upon you completely; isn't that right?

Mr. WILSON. No, sir.

Mr. GOODMAN. You don't have any clients who will come in, after they give you the information, that will rely upon your expertise?

Mr. WILSON. I will not allow them to not sit down and discuss the return, sir.

Mr. GOODMAN. But that's your office practice, right?

Mr. WILSON. Yes, sir.

Mr. GOODMAN. That's not the practice for all offices, is it?

Mr. WILSON. I don't know, sir.

Mr. GOODMAN. You don't know whether any offices that are of repute——

Mr. WILSON. I've never had my return prepared by another office. I don't know what the practices are.

Mr. GOODMAN. Your clients don't have the kind of training that you have, do they?

Mr. WILSON. No, sir.

Mr. GOODMAN. Those sound like pretty complex laws to me. That wasn't a question. Pardon me.

Are those pretty complex laws?

Mr. WILSON. No, sir.

Mr. GOODMAN. So we don't need any tax reform?

Mr. WILSON. The issues being discussed in the 1980 return are basic principles in the Internal Revenue Code that are understandable, that are a very elementary level, going through your years of experience, and they are not complex.

Mr. GOODMAN. You're representing to us, then, that what you told us about wasn't complex?

Mr. WILSON. These issues are not complex.

Mr. GOODMAN. May I have the Chair's indulgence, please?

The CHAIRMAN. Mr. Goodman, can you advise the Chair about how much time you would estimate you're going to need?

Mr. GOODMAN. I may be through, Mr. Chairman.

The CHAIRMAN. We will wait patiently.

While Mr. Goodman is discussing with his client, Senator Sarbanes asks: was the 25-percent rule, to which you referred, a rule concerning the amount of gross income not reported?

Mr. WILSON. Yes, sir, to 25 percent understatement of gross income.

The CHAIRMAN. On this return, the 1980 return, what amount of gross income was not reported?

Mr. WILSON. The gross income not reported was 76.5 percent.

The CHAIRMAN. The Senator from Arkansas, Mr. Pryor, asks, to the best of your knowledge, has the practice of signing blank tax returns been stopped?

Mr. WILSON. I have not seen that practice in our particular situation because, again, we feel it's the responsibility of the taxpayer to understand his return before he mails it in. We would not do that We would insist on getting an extension if no other alternatives were available, if they were out of town. So it is very difficult to speak to what the practice would be nationally.

But certainly I know the Internal Revenue Service, through their tax preparer regulations and recent laws adopted by Congress, would certainly discourage any preparer from conducting that practice.

The CHAIRMAN. Senator Heflin asks you to explain each entry and any peculiarities of entries on form 2119 for his, Judge Claiborne's, 1980 tax return.

Mr. WILSON. The first peculiar entry would be item 4, line 4, which asks for commissions on the sale. An entry was made for $410,688 for the commissions and expense of sale. That entry should be $47,388, as set forth in the detailed attached schedules.

That results in an immediate difference on line 5 because you subtract line 4 from line 3. And so line 5, which is just a remainder, instead of being $314,812, really is $677,612.

Line 6 is misstated. Line 6 is basis. The attached schedule says $362,800. Again, the commissions were added back in to that figure again, to deduct the commissions twice. So now the figure becomes $410,182.

Line 9 is misstated because it's a carrydown from line 5.

The big mistake is line 18, at the bottom, wherein an amount was entered as zero as the gain reportable this year, recognizable. And that's the amount of cash that you put in your pocket minus the $100,000 exclusion. That was entered as zero. It should have been $214,812, which was then carried over to schedule D for the appropriate 60-percent exclusion from income, which then resulted in 40 percent of it, or $85,925, not being carried to page 1 as ordinary income.

So the big mistake was line 18. Line 4 also was very materially overstated.

The CHAIRMAN. What about line 6, the basis?

Mr. WILSON. Yes, that was overstated by $47,388.

The CHAIRMAN. Now, on the supplement to form 2119, the taxpayer—and that's filed as part of the 1980 return. If you look at the supplement, the taxpayer provided all the detailed information necessary to complete form 2119 accurately, did he not?

Mr. WILSON. I assume so, sir. I don't know whose handwriting that is. But I assume the preparer got that information from the taxpayer.

The CHAIRMAN. It was filed, apparently, as part of the 1980 return.

Mr. WILSON. Yes, sir.

The CHAIRMAN. And all the information is there to accurately file form 2119, is it not?

Mr. WILSON. I don't know, sir. Using that information, I don't know of all that information is accurate. I assumed for my purposes that the basis, as listed, was accurate and was documentable, or that maybe something——

The CHAIRMAN. On the assumption——

Mr. WILSON. Yes, I assumed.

The CHAIRMAN [continuing]. On that assumption, would the return suggest an intent to defraud or possibly only a mistake with respect to the sale of the residence?

Mr. WILSON. It does not imply a mistake to me, because the nature of the lines—these were not mathematical errors, generally speaking. They weren't computational errors. There is no way, elementary, in doing lines 15 through 20 at the bottom, of ending up with zero on line 18. It's not a computational error.

The CHAIRMAN. Mr. Goodman.

Mr. GOODMAN. Thank you, Mr. Chairman. I'll be very brief.

The CHAIRMAN. I will announce to the committee that it would be the intention of the Chair to recess for the evening at the conclusion of this testimony.

Mr. GOODMAN. Mr. Wilson, calling your attention to exhibit No. 37, and your testimony about the $214,812——

Mr. WILSON. Excuse me, sir. What is 37 again?

Mr. GOODMAN. Thirty-seven is the form 1040, and I'm calling your attention to form 2119 thereof.

Mr. WILSON. Yes, sir.

Mr. GOODMAN. You indicated that the $214,812 should have been on line 18.

Mr. WILSON. Yes, sir.

Mr. GOODMAN. You do see that figure on the return, do you not?

Mr. WILSON. I see that——

Mr. GOODMAN. You see that very figure on the return?

Mr. WILSON. Yes, sir.

Mr. GOODMAN. By "the return," I'm talking in terms of exhibit No. 37.

Mr. WILSON. Correct, line 16.

Mr. GOODMAN. Line 16. And you also see it again, don't you?

Mr. WILSON. Line 19, gain to be postponed.

Mr. GOODMAN. So the problem area, as you see it, the very figure is on the return, but you have difficulty with it because it's on the wrong line?

Mr. WILSON. That's why I'm saying I don't think it's a computational error.

Mr. GOODMAN. If, in fact, the taxpayer made full disclosures, and his tax preparer put it on the wrong line, unintentionally, that certainly was an unfortunate error, was it not?

Mr. WILSON. Very, yes, sir.

Mr. GOODMAN. Nothing further.

Mr. DEWINE. Mr. Chairman, I just have several questions.

The CHAIRMAN. Mr. DeWine.

REDIRECT EXAMINATION

Mr. DEWINE. Mr. Wilson, in regard to questioning by Mr. Goodman, you made a statement when you stated that, in your opinion, the issues involved were not very complex.

Mr. WILSON. Yes, sir.

Mr. DEWINE. What issues and what did you mean? What specifically?

Mr. WILSON. The gain from the sale of a principal residence is an issue that most taxpayers understand. Certainly, when they get into contemplating selling their home, with the plethora of information available in our society today, the knowledge level of the average citizen is such that they understand that to defer the gain on the sale of the residence there are certain requirements to be met.

Mr. DEWINE. And the reporting of ordinary income?

Mr. WILSON. Yes. In the case of accounts receivable, when you're on a cash basis and they have never been reported, that's again a basic tenet of taxation, that you have no basis in those accounts receivable, and that if you collect your fees you're going to pay income tax on them.

Mr. DEWINE. Mr. Goodman asked you about the initial responsibility—I think I wrote his question down—the initial responsibility of a taxpayer, and you answered to the effect that something was the initial responsibility.

In your opinion, what is the total responsibility of a taxpayer based upon your knowledge of the area and your experience in the area and their relationship to the tax preparer?

Mr. WILSON. The taxpayer is—has a good faith responsibility to consider the reasonableness of the results he's getting from his preparer. He certainly is not subjected to a standard that he must determine that the return is correctly prepared; otherwise, he would not go to the preparer.

But there becomes a point of reasonableness when, in my experience, a taxpayer knows as well as anyone when a return is grossly in error. As I said before, the first question that is asked is "How much do I owe" or "What is the refund?" That standard quickly sinks into the taxpayer's mind in relation to everything he or she knows happened to themselves that year. There is a reasonableness test that the taxpayer must live up to.

Mr. DEWINE. Mr. Wilson, based upon your experience in this field that you've already testified to, do you have an opinion as to whether a reasonably intelligent taxpayer, with a legal education, could have signed this return in the good faith belief it was correct?

Mr. GOODMAN. Mr. Chairman, I'm going to object to the question. I don't believe that the witness is competent to testify to that. He indicated, at least as far as the standard of wilfullness, he does not have any experience; he has no experience as far as the criminal justice system and taxes are concerned.

On that basis, I would suggest that he cannot give that answer. In addition, I would respectfully submit that he is invading the province of the ultimate finder of fact by giving his opinion as to the legal conclusions.

Mr. DeWine. Mr. Chairman, if I could, clearly the witness established that he is an expert in the area; he can certainly give an opinion in this regard, and it is certainly up to the trier of fact to make the determination as to what weight they want to give that witness' opinion.

The Chairman. Mr. DeWine, would you rephrase your question dealing with the good faith aspect and not on the question of willfulness?

Would you have objection then, Mr. Goodman? Well, let's let him rephrase the question and see if you do.

Mr. DeWine. Let me try again, Mr. Chairman, if I could.

Based upon your knowledge of this case, and based upon the facts that you have about the—that have been supplied to you about the income of the taxpayer in this particular case, what you feel a reasonably prudent taxpayer's response would be when shown that bottom line figure on that return?

Mr. Wilson. It's wrong. You'd better go back and check it again.

Mr. DeWine. And what do you base that conclusion on?

Mr. Wilson. A tax liability of $1,103 when a person had receipts of $54,500 in wages——

Mr. DeWine. How much?

Mr. Wilson. $54,500 of wages, $87,988 professional fee income, and the sale of a residence of $725,000, with a reinvestment of $275,000, and to be told that his tax liability was $1,103 for the year, the response would be: "There is something wrong; we had better sit down and look at this again."

Mr. DeWine. Thank you. Thank you, Mr. Chairman.

Mr. Goodman. Just one further area which I believe is relevant.

The Chairman. One question for Mr. Goodman.

RECROSS EXAMINATION

Mr. Goodman. I don't know whether I can do it in one question, but it will be very limited, Mr. Chairman.

You don't know, do you, Mr. Wilson, what the taxpayer in this particular instance said or did when he was advised that he got a refund, do you?

Mr. Wilson. No, sir; I don't.

Mr. Goodman. Thank you.

Nothing further, Mr. Chairman.

Mr. DeWine. I have nothing further, Mr. Chairman.

The Chairman. Senator Heflin wishes me to raise this question with you.

According to Judge Claiborne's testimony, when he received the tax refund in the amount of $44,000 or thereabouts, he then did go to Mr. Watson, who was the tax preparer, and raised the question of whether the refund was in order.

Now, what is your reaction to that course of events?

Mr. Wilson. There were mistakes on the form 1040 in the form of how much tax credit was claimed for taxes already paid in. The taxpayer had, in fact, paid an estimated payment in April 1980 of $2,500, the first quarter payment. That was not claimed on the return. In addition, when the extension was filed in April 1981, a tax was declared of $42,000, which mean the check had to be written at that time of $20,818. That was not claimed on the return. Those items are at the bottom of my summary schedule.

So if the taxpayer knew he was going to get a $20,927 refund, and got a check for $44,000, he might well ask, "What's the difference?" That would be readily explainable: "Well, we didn't claim these several payments on the original return."

The **Chairman**. What importance would you give to the fact that he purported to have signed the return en blanc and did not know of the amount of the refund at the time that the return was filed?

Mr. **Wilson**. That's a difficult question to answer. I don't know what would be in his mind. I don't understand the question, what importance——

Mr. **Chabraja**. Mr. Chairman, I don't believe that that's the contention of the respondent for the year 1980. The question probably is not fairly put to the witness, although there is no objection.

The **Chairman**. Senator Pressler asks what usually happens to a tax preparer who prepares such erroneous returns? Is there a special fate?

Mr. **Wilson**. There are places—there are several levels. There are penalty provisions; there are provisions not allowing the individual to even practice before the IRS any more. There are provisions where the professional organization would not allow you to practice any more. And if it got into conspiracy, then the criminal side could actually have you incarcerated if you were convicted of conspiring to evade taxes.

The **Chairman**. Senator Pressler also asked me to inquire what happens if the taxpayer owes a large tax, but cannot borrow the money to pay it.

Mr. **Wilson**. He is advised to mail the return in, to immediately accompany that with a letter explaining the situation, and to request a conference to work out the problem. But not to file a return is not appropriate.

The **Chairman**. Thank you very much, Mr. Wilson.

Mr. **Wilson**. Thank you

The **Chairman**. You're excused at this point. Let me turn to the motion *in limine*. The managers have moved *in limine* to exclude irrelevant evidence proffered by Judge Claiborne. Judge Claiborne has filed an opposition to that motion. We heard the argument on this matter this morning.

Now, so that we can be better informed of the exact nature of the proof which would be offered by Judge Claiborne on three issues of alleged prosecutorial misconduct, I am asking counsel for Judge Claiborne to be prepared to describe, in an offer of proof, tomorrow morning the expected testimony of his proposed witnesses on the following issues presented by Judge Claiborne's second affirmative defense to articles I and II of the Articles of Impeachment:

Specifically, one, any alleged use of perjured testimony to obtain Judge Claiborne's tax fraud conviction. Two, alleged attempts to influence the testimony of witnesses who testified or who had testimony to offer about Judge Claiborne's 1979 and 1980 taxes. And three, the alleged burglary of his home and the photographing of his financial records.

Counsel for Judge Claiborne should identify the names of the witnesses he would call on these issues and what he believes the testimony of each of them will be about their personal knowledge of these matters.

He should also indicate for these witnesses whether they will appear voluntarily or whether subpoenas for them will be required.

Counsel for Judge Claiborne will be permitted not more than 1 hour to make this offer of proof, and counsel for the House will be permitted not more than 1 hour to respond. Let me say I hope that that can be done in less time than that, if at all possible.

If you can further tell us, Mr. Goodman, perhaps this evening, what the order of your witnesses will be on the tax issues in this case, we can then make the necessary preparations.

Mr. GOODMAN. Yes, Mr. Chairman.

If I could have 5 minutes to provide that——

The CHAIRMAN. Oh, I don't think we have to hold the committee for that, if you would just advise counsel.

Mr. GOODMAN. Certainly.

The CHAIRMAN. I would ask members of the committee to be here promptly at 9 o'clock in the morning. We have a small item of administrative business to consider at that time.

The committee will stand in recess until 9 o'clock tomorrow morning.

[Whereupon, at 5:43 p.m., the committee was adjourned.]

SENATE IMPEACHMENT TRIAL COMMITTEE

(Appointed Upon the Adoption of Senate Resolution 481, 99th Congress, 2d Session, Pursuant to Rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials)

TUESDAY, SEPTEMBER 16, 1986

U.S. SENATE,
SENATE IMPEACHMENT TRIAL COMMITTEE,
Washington, DC.

The committee met, pursuant to notice, at 9:25 a.m., in room SR-325, Russell Senate Office Building, Hon. Charles McC. Mathias, Jr., chairman of the committee, presiding.

Present: Senators Mathias, Sarbanes, Bingaman, Gore, Pryor, DeConcini, Heflin, Warner, Rudman, Pressler, Hatch, and McConnell.

Managers and counsel from the House of Representatives present: Peter W. Rodino, Jr., Robert W. Kastenmeier, William J. Hughes, Romano L. Mazzoli, Dan Glickman, Hamilton Fish, Jr., Henry J. Hyde, Michael DeWine, Nicholas D. Chabraja, special counsel; and David DeBruin, associate special counsel.

House Judiciary Committee staff present: M. Elaine Miekle, general counsel; Alan F. Coffey, Jr., associate general counsel; Judith Bailey, counsel; Daniel M. Freeman, counsel; Gary Goldberger, counsel; Warren S. Grimes, counsel; Joseph V. Wolfe, counsel, and Jonathan R. Yarowsky, counsel.

Respondent and counsel present: Hon. Harry E. Claiborne; Oscar Goodman, counsel; Senator Howard Cannon, counsel, and Michael V. Stuhff, associate counsel.

Staff present: Michael Davidson, counsel; Floyd M. Riddick, consultant; John B. Childers, staff director; John F. Rixey, Jr., deputy staff director; Anthony L. Harvey, clerk; Byron F. Hoover, assistant clerk; Gerald B. Gereau, security coordinator; Ann Pincus, press liaison, and Randy Dove, press liaison.

The CHAIRMAN. The Committee will come to order.

The Chair has received an additional request from the managers on the part of the House. Would the chairman of the House managers like to make that request to the full committee?

Mr. RODINO. I would like to defer to counsel, Mr. Chairman.

The CHAIRMAN. Mr. Chabraja.

Mr. CHABRAJA. Mr. Chairman and members of the committee, before the House managers rest their case-in-chief, we have some matters to take up with the Chair.

The first of those matters, rather important, refers the Chair back to a ruling of September 10 where you ruled on our motion favorably to admit into evidence the prior admissions of Judge Claiborne, which we identified in summary fashion in the motion.

I would like in the first instance to leave the file with the secretary to the committee, an index to the prior admissions of Judge Claiborne as substantive evidence, to have it distributed to the panel, and in the second instance, ask leave to read into this record those admissions which, my guess is, would take about 10 minutes and, I think if read in the traditional fashion, I would like leave to read the questions and answers responsively with Manager Fish, who you may recall presented the motion successfully before the panel last week.

The CHAIRMAN. Mr. Goodman, do you have any comment?

Mr. GOODMAN. Mr. Chairman, it is our understanding that the ruling has already been made and that the statements attributed to Judge Claiborne are in fact admissible. We have no objection to this process being utilized for presentation of those statements.

The CHAIRMAN. Thank you, Mr. Goodman.

Mr. Fish.

Mr. CHABRAJA. With the chairman's leave, I will file these papers with the committee secretary and they may be distributed. It might help the panel to follow along.

The first admission is from redirect examination of Judge Claiborne at the second trial, examination by Mr. Johnson found at transcript page 1009. It begins with—Mr. Fish will read the part that Judge Claiborne had at the trial—line 7 through line 13.

Question: "Were you continuing to receive frequent checks that came in?"

Mr. FISH. "Yes."

Mr. CHABRAJA. "Frequently?"

Mr. FISH. "Yes."

Mr. CHABRAJA. "After you were on the bench?"

Mr. FISH. "Yes."

Mr. CHABRAJA. Admissions 2 through 15 come from the direct examination of Judge Claiborne at the first trial by Mr. Goodman. They are found at transcript pages 3145 through 3149, commencing on 3145 at line 19 with this question by Mr. Goodman: "Now I would like to talk to you about the 1979 tax returns, and I am going to show you—with the court's permission, I am going to approach you, Judge Claiborne, and ask you to look at two folders evidencing matters which are already in evidence. And in particular, I would like to ask you some questions about Government exhibit 11, which you have in front of you. This exhibit contains nine checks from James J. Brown to yourself, does it not?"

Mr. FISH. "Yes."

Mr. CHABRAJA. "All right. I would like to specify the date and the amount of the check. The first check appears to be a check dated January 5, 1979, in the amount of some $3,381.10, which was deposited at the Pioneer Citizens Bank; is that correct?"

Mr. FISH. "That's correct."

Mr. CHABRAJA. "The next check is a check dated January 19, 1979, in the amount of $17,500, which appears to be deposited at the Pioneer Citizens Bank; is that correct?"

Mr. FISH. "That's correct."

Mr. CHABRAJA. "The next check is a check dated January 26, 1979, in the amount of $833.33, which appears to have been cashed at the Horseshoe Club; is that correct?"

Mr. FISH. "That's correct."

Mr. CHABRAJA. "And the next check is a check in the amount of $84.38, dated January 26, 1979, which appears to be deposited in the Pioneer Citizens Bank; correct?"

Mr. FISH. "That's correct."

Mr. CHABRAJA. "The next in order would be a check dated February 15, 1979, in the amount of $1,106.66, which appears to have been negotiated at the Horseshoe Club in Las Vegas; is that right?"

Mr. FISH. "That's correct."

Mr. CHABRAJA. "The next check is a check in the amount of $7,000, dated July 19, 1979, which appears to have been deposited at the Pioneer Citizens Bank; is that correct?"

Mr. FISH. "That's correct."

Mr. CHABRAJA. "The next check is August 31, 1979, in the amount of $2,905.90, which appears to have been negotiated at the Horseshoe; is that correct?"

Mr. FISH. "That's correct."

Mr. CHABRAJA. "The next to last check is a check dated November 13, 1979, in the amount of $3,011.56, which appears to have been negotiated at the Horseshoe Club; is that correct?"

Mr. Fish "That's correct."

Mr. CHABRAJA. "And the last check in Defendant's Exhibit No. 11 is a check dated November 13, 1979, in the amount of $250, which appears to have been deposited at the Pioneer Citizens Bank; is that correct?"

Mr. FISH. "That's correct."

Mr. CHABRAJA. "Now, I would like you to refer to exhibit 16 now and ask whether that document, which is in evidence, contains five cashier's checks which you received?"

Mr. FISH. "Yes, it does."

Mr CHABRAJA. "And from whom did you receive these five cashier's checks?"

Mr. FISH. "Annette Quintana."

Mr. CHABRAJA. "And each check is in what amount?"

Mr. FISH. "$1,000."

Mr. CHABRAJA. "Are you able to tell the jury the date—well, is the first date January 16, 1979, this cashier's check?"

Mr. FISH. "Cashed at the Holiday Hotel."

Mr. CHABRAJA. "Where?"

Mr. FISH. "In Reno, Nevada."

Mr. CHABRAJA. "All right. The next check is dated what date?"

Mr. FISH. "February 12, 1979."

Mr. CHABRAJA. "How was that negotiated?"

Mr. FISH. "I can't tell."

Mr. CHABRAJA. "All right. But you received the check, did you not?"

Mr. FISH. "Yes; I did."

Mr. CHABRAJA. "All right. The next check is a check dated—is that March 9, 1979—in the amount of $1,000?"

Mr. FISH. "Yes; it is."

Mr. CHABRAJA. "Can you tell how that was negotiated?"

Mr. FISH. "No; I cannot."

Mr. CHABRAJA. "But you did receive it, did you not?"

Mr. FISH. "Yes; I did."

Mr. CHABRAJA. "And the next check is a check dated March—nope—April 12, 1979, in the amount of $1,000. Are you able to tell us how that was negotiated?"

Mr. FISH. "Yes. That was deposited at the Pioneer Bank."

Mr. CHABRAJA. "And the last check in this series, and the last check, dated May 14, 1979, in the amount of $1,000, was negotiated where, if you could tell?"

Mr. FISH. "Horseshoe."

Mr. CHABRAJA. "And you received all of that money, did you not?"

Mr. FISH. "Yes; I did."

Mr. CHABRAJA. Admissions 16 through 19 come from the direct examination of Judge Claiborne at the first trial, conducted by Mr. Goodman. They are found at transcript page 3167 through 3170. They begin at line 23 on 3167, with this question: "And did you receive money as a result of that from your private practice while you were on the Bench during the year of 1980?"

Mr. FISH. "Yes; I did."

Mr. CHABRAJA. "I would like to show you two exhibits—three exhibits—Government's exhibit No. 12, and ask you whether you can identify what is contained therein?"

Mr. FISH. "There's two checks written by James Brown to me, one in the amount of $803.30, dated August 6, 1978, and one dated November 7, 1980, in the amount of $7,119."

Mr. CHABRAJA. "And were those checks negotiated?"

Mr. FISH. "Yes; they were."

Mr. CHABRAJA. "How were they negotiated?"

There is no response.

"If you can tell."

Mr. FISH. "I can't really tell. The stamp is blurred. But I mean, I would see enough of it that I think it was deposited to my account in the First National Bank, which is now First Interstate Bank."

Mr. CHABRAJA. "All right. And as to the second check in the amount of $7,000 plus?"

Mr. FISH. "Same."

Mr. CHABRAJA. "That was also negotiated, and the moneys were received by you; is that correct?"

Mr. FISH. "That's correct."

Mr. CHABRAJA. "And did you make a notation of those moneys being received by you?"

Mr. FISH. "I sure did."

Mr. CHABRAJA. "And did you place those in your recording book?"

Mr. FISH. "Yes; I sure did."

Mr. CHABRAJA. "All right. Now I would like you to take a look, Your Honor, at Government's exhibit 20 and ask what that reflects?"

Mr. FISH. "That's a check from Peter Echeverria."

Mr. CHABRAJA. "When is it dated?"

Mr. FISH. "December 31, 1979, in the amount of $42,452.34."

Mr. CHABRAJA. "When did you receive that check?"

Mr. FISH. "On January 3 of that year."

Mr. CHABRAJA. "And was that check negotiated?"

Mr. FISH. "Yes; it was."

Mr. CHABRAJA. "How was that negotiated?"

Mr. FISH. "Deposited to my account at Pioneer Citizens Bank."

Mr. CHABRAJA. "Did you make a recordation of the fact that you received those moneys?"

Mr. FISH. "Yes, I did, a deposit on January 4."

Mr. CHABRAJA. "Of what year?"

Mr. FISH. "1980."

Mr. CHABRAJA. "All right. Now I would like you to look at what has been introduced in evidence as Government's exhibit No. 18. I ask you whether you can identify that?"

Mr. FISH. "Yes. It is a check from Hawkman, Salkin & DeRoy."

Mr. CHABRAJA. "In what amount."

Mr. FISH. "In the amount of $37,500."

Mr. CHABRAJA. "Dated what date?"

Mr. FISH. "August 15, 1980."

Mr. CHABRAJA. "How was that negotiated?"

Mr. FISH. "Cashed at the Golden Nugget Casino."

Mr. CHABRAJA. Admission No. 20 comes from the second trial of Judge Claiborne, from direct examination by Mr. Johnson. It begins at page 857 at line 1 and ends at page 858, line 3.

Question by Mr. Johnson: "Were you at that time keeping any kind of personal record of fees that you received?"

Mr. FISH. "Yes, I was."

Mr. CHABRAJA. "Would you tell us what kind of a record that was, please?"

Mr. FISH. "Well, when I would receive a payment, a fee owed me before I went on the bench, from somebody—and some of them were from Mr. Brown, Ms. Quintana, as you can readily see—I would write. I had and have on my desk a note container. I had blank pieces of paper in it to write notes on, hundreds of them. It's a plastic device. I would take a note out of the container, and I would write down on the note the amount of the check, the date of the check, where it came from and most times, what I did with it. If I cashed it somewhere, I wrote on it where I cashed it. If I deposited it in a bank, I wrote where I deposited it.

"I would take this list, and I would put it in an envelope that I kept in my desk drawer of the desk in my chambers. And then periodically, I would take that envelope home, and I'd put it in a regular envelope that I had at home in my desk for that purpose.

"Periodically, I would take those slips out at home, and I would record them in a book that I had where I kept just my own information for my own private knowledge. And I used that book for a record of my collections, showing 1978, 1979, 1980, 1981."

Mr. CHABRAJA. "I am going to show you a book that has been marked for identification as Defendant's exhibit 47 and ask you if that is the book that you were referring to?"

Mr. FISH. "That's the book."

Mr. CHABRAJA. "When did you begin to make notes in that book?"

Mr. FISH. "In 1976. The first entry, I think, is January 26, 1976."

Mr. **Chabraja**. Admission 21 also comes from the second trial of Judge Claiborne on direct examination by Mr. Johnson, and it begins at page 858, line 25, and goes through line 4 on the next page.

Question by Mr. Johnson: "Now, with respect to the book, Judge Claiborne, are entries in that book all in your handwriting?"

Mr. **Fish**. "Yes, sir."

Mr. **Chabraja**. "Are they an accurate record of fees that you received?"

Mr. **Fish**. "Absolutely."

Mr. **Chabraja**. Admission 22 comes from the redirect examination of Judge Claiborne at the second trial, by Mr. Johnson. It is found at page 1008 of the transcript, beginning at line 18 and ending at line 22.

The question by Mr. Johnson: "Judge Claiborne, while you were in private practice and before you were appointed as a judge, was it your regular practice to have your checks from fees deposited in a bank account?"

Mr. **Fish**. "Yes."

Mr. **Chabraja**. Admission 23 comes from the cross-examination of Judge Claiborne at the first trial.

The question by Mr. Hendricks begins at page 3280 of that transcript, line 9, and ends at line 18.

Question: "All right. So it was your practice for all these years to deposit checks, legal fee income, into your bank account, was it not?"

Mr. **Fish**. "Well, sure."

Mr. **Chabraja**. "All right. And that is a standard way, in your experience, that businessmen do business, is it not?"

Mr. **Fish**. "When I was in business, that's the way I did it. I did it for the very purpose I wanted my books and records to show every penny that came through my office, and it did."

Mr. **Chabraja**. Admission 24 comes from the cross-examination of Judge Claiborne at the first trial. Again, the questions are put by Mr. Hendricks. The questions are found at pages 3281 of the transcript, beginning at line 18 and ending at line 22.

The question: "Would you agree that a cash transaction is more difficult to conceal than a deposit of a check in a bank account?"

Mr. **Fish**. "You didn't say transaction. I'd say a cash transaction would be much easier to conceal than a check transaction."

Mr. **Chabraja**. Admission 25, the last admission, comes from the direct examination of Judge Claiborne at the first trial, conducted by Mr. Goodman. It begins at page 3166, line 22, and ends at line 6 of the next page.

The question by Mr. Goodman: "Did you have any dissatisfaction at that point in time with Mr. Jay Wright?"

Mr. **Fish**. "Not really, no."

Mr. **Chabraja**. "Did you have any type of problem?"

Mr Fish. "He's just a very busy man. He has a large, large business, and he has been in Las Vegas a long time, and he has many, many clients, and I have no complaints with him. He is a fine, warm, wonderful friend of mine, and we were also in the service together in World War II, and he is highly qualified and exceedingly honest."

Mr. CHABRAJA. Thank you, Mr. Fish.

That ends the presentation of the admissions by the House.

One last matter, Mr. Chairman, to be certain before we rest that our records and the Chair's records are identical with respect to the documentary evidence in our case-in-chief. My records reflect that the House exhibit 1 through 33 were admitted in accordance with the Chair's ruling of September 10 and were in evidence at the commencement of this proceeding.

My records also indicate that Manager Hughes had marked, identified, and offered exhibits 34 and 35, which were accepted by the Chair into evidence during the examination of Mr. Wright; that exhibit 36 was marked, identified, not authenticated, and not offered by the House; that exhibit 37 through 39 were marked, identified and offered by Manager DeWine.

So our records reflect that exhibits 1 through 39, with the exception of exhibit 36, are in evidence. Prior to resting, we want to make certain that the Chair has the same record.

The CHAIRMAN. Mr. Goodman, is that your understanding?

Mr. GOODMAN. Mr. Chairman, based on the Chair's prior ruling, that is my understanding.

The CHAIRMAN. I think that is agreed on all parts, then.

Senator RUDMAN. Mr. Chairman.

The CHAIRMAN. Yes.

Senator RUDMAN. Are we allowed to ask a question through you or counsel? I have one question.

The CHAIRMAN. I will ask unanimous consent, you can direct your question directly to counsel.

Senator RUDMAN. I would just like to ask counsel, in the colloquy that he has just had before the committee, on item 21——

Mr. CHABRAJA. Yes, sir, a key item.

Senator RUDMAN. I wonder if counsel has fully explained that from the record, if that is the only part of the record that we are going to have presented to us?

It reads: "The entries in the diary which reflect legal fees of $41,073.91 for 1979 and $87,912.43 for 1980 are an"—quote—"absolutely"—close quote—"accurate of fees that Judge Claiborne received." Is that the only evidence that you are going to present to us as to those admissions?

Mr. CHABRAJA. Do you mean with respect to the amounts?

Senator RUDMAN. That is correct. You have not referred to the amounts. You have only referred to—if you look back at the colloquy, you have only referred to the judge saying in an admission, in testimony at his second trial, that he kept absolutely accurate records. But there is not before this committee, other than this exhibit to my knowledge, that particular part of the record. And I am just asking counsel the question because I think it is an important issue.

Mr. CHABRAJA. Senator, your recollection is not exactly accurate. There are at least three things in the record that identify the amounts. The first is in 1 of the 33 exhibits, the number of which escapes me at the moment, the committee accepted into evidence Judge Claiborne's records, a diary that is referred to here, which identifies the amounts, both in aggregate and singularly, each item.

There are also in evidence in the first 33 or 34 exhibits, each of the fee checks that were negotiated, in addition to the admission which you just referred to.

Looking back at the House managers and seeing nobody raising an additional matter, Mr. Chairman, we rest the case-in-chief of the House.

Senator HEFLIN. Before you do that, I would like to ask a question. Was there an admission at trial as to the method, place, of keeping the cash received from the checks negotiated at hotels or casinos, and what he cashed as opposed to deposit? In other words, what I am asking, was there any questioning done as to where he, in effect, deposited his cash, kept his cash, what procedure relative to that?

I gather that over this period of time, it is close to $40,000 or more—I do not know what the total is, but a substantial sum—which causes necessarily a method of where do you keep it—either a lock box, or a wall safe, a can or a jar.

The CHAIRMAN. He testified as to that.

Senator HEFLIN. What was the evidence on that as to admissions?

Mr. CHABRAJA. I don't want to unfairly characterize the Judge's testimony, so accept my remarks in that spirit, and maybe Mr. Goodman will have something to say about that, but there was testimony. There was testimony that there was roughly $22,000 in 1979 and some $40,000-plus in 1980 of checks cashed. My recollection of the transcript with respect to that was that the Judge needed some pocket money.

Senator HEFLIN. But there were no questions about where, what form it was kept in—a lock box.

Mr. CHABRAJA. Not to my recollection. My recollection was that the checks were cashed, and that he needed some incidental money.

If there are no further questions, we will again rest.

The CHAIRMAN. Mr. Chabraja, I am going to ask unanimous consent that we waive rule 19 one more time in favor of Senator Bingaman.

Senator BINGAMAN. Perhaps you plan to do this at another time, but which of the witnesses that you have presented do you contend gave evidence of willfulness on the part of the Judge in understating his income?

Mr. CHABRAJA. Both Jay Wright, for the year 1979, and the expert for the year 1980, together with natural inferences to be drawn from the facts that were adduced.

I should also add in partial response to Senator Rudman's question, and it relates to yours, Senator Bingaman, that in addition to the documents I referred to, there is the sworn testimony of some 10 witnesses from the prior trial, all of whom summarized those underlying documents, testified as to the number of fee checks, their amount, and where the checks were negotiated. Without in any way trying to argue the case at this stage, which seems to me to be inappropriate, we believe on behalf of the House that the evidence offered by Jay Wright that he did not have information with respect to Judge Claiborne's income for the year 1979, that coupled with the fact that Judge Claiborne had clear and precise information in the form of a diary, having received the income, also coupled with the pattern of conduct that for the first time in his life led to the cashing of significant fee items at casinos rather than depositing them in banks in numbers much larger than incidental expenses, leads us to more than a belief that there is a pattern of conduct from which willfulness is readily inferred. For the year 1980, the documentary evidence seems to us to be overwhelming. The amount of the fees is clear. The amount of the real estate transaction and the tax consequences is clear. And you heard Mr. Wilson's testimony, and at the risk of being argumentative, I won't summarize it. It seems to me that we have a pattern of willfulness there that is readily inferrable from an analysis of the documents and the circumstances, and once again we have the same conduct, the cashing of very large items, and we also have the unusual circumstances relating to change in accountants.

Senator BINGAMAN. Thank you.

The CHAIRMAN. Thank you, Mr. Chabraja.

Now, the committee has asked Judge Claiborne's counsel to make an offer of proof and has also asked the House to respond to that offer of proof.

The purpose of the request is to aid the committee in ruling on the managers' motion *in limine* to exclude certain witnesses proposed by Judge Claiborne. The offer of proof, I hope, will also help the committee, and through the committee will help the Senate in understanding the specifics of what Judge Claiborne has described as an affirmative defense to the Articles of Impeachment.

The fact that the committee has asked for an offer of proof does not necessarily mean that the committee will decide to hear any of the witnesses named in the offer of proof. Instead, the offer of proof will help the committee to decide whether any further witnesses beyond those now scheduled to testify will be heard, and if so, which witnesses and under what limitations.

But in any event, the offer of proof should be limited to the expected testimony of those witnesses with testimony to offer on the specific issues listed in yesterday's order—that is, allegations of subornation of perjured testimony; intimidation of witnesses, and a burglary at Judge Claiborne's home.

Are you prepared to proceed at this point, Mr. Goodman?

Mr. GOOODMAN. I am, Mr. Chairman.

The CHAIRMAN. I should note that it is going to be necessary for the committee to adjourn a little early this morning, so we will ask the cooperation of counsel in being as concise as possible.

Mr. GOODMAN. Thank you, Mr. Chairman, honorable members of the committee, respondents, House of Representatives, and Judge Claiborne.

Things are happening so quickly that each day in these proceedings, events are brought to our attention which I am shocked have not been discovered in the past 4 years that the litigation involving Judge Claiborne has taken.

Yesterday—and I make this as a prefatory remark because I think within the context of the perjury allegations, it is important to look at it in the abstract as well as in the particular—we had the presentation on behalf of the managers of two witnesses who were their primary witnesses, Mr. and Mrs. Wright. I would submit that the essence of the Wrights' testimony was that they could not have received the April 11, 1980 letter which was drafted by Judge Claiborne on that day and delivered by Judy Ahlstrom because they made a thorough search of their records, and they were of the mind and of the opinion that none of their records, at least as far as Judge Claiborne was concerned, and in particular the April 11, 1980 letter, could not have been mislaid.

If we were to learn anything from their testimony, that was the message which the House was trying to convey.

In an attempt to undermine the credibility of the witnesses and the import of their testimony, I spent a great deal of my time on cross-examination to establish that Mr. Wright did not have any independent recollection of what took place at the pertinent time in 1980, nor since that, nor before that; and in fact, his testimony was shaped as a result of numerous hours—be it less than 100 or around 100; it really does not matter—of being in contact with the representative of the IRS, Mr. Skelton, representatives of the FBI, and generally being prepared for his testimony time and time again in two trials in anticipation, of the hearing before this honorable committee, and in numerous interviews with Government officials.

I would submit that the shaping of the testimony was such that Mr. Wright was placed in a state of mind where he did not actually know that he was perjuring himself.

I am not going to stand before this committee and say that Mr. Wright knowingly perjured himself yesterday. But if anybody who was sitting here yesterday did not realize what the issue was as far as the integrity of the custody of the chain of evidence of that April 11, 1980 letter, then they were missing the entire point, and we wasted an entire day as far as these proceedings are concerned.

Last night—last night—for the first time, in an interview with one of Mr. Wright's employees, a gentleman whose name was mentioned, Kenneth Swanson, the accountant who was working on the tax return of Annette Quintana, Judge Claiborne's associate, a gentleman who had information to the effect that Annette Quintana was writing checks in $1,000 increments from moneys earned by her for work which she had done and also collecting moneys for work that Judge Claiborne had done before he got on the bench, out of the blue, we learn the following facts—and I submit that it is imperative that we be permitted to expand this record based on this.

If somebody broke into your home, or if somebody broke into your business, and you were under oath, and you were being asked about the custody of a particular document or the integrity of the document, commonsense dictates that you would bring it to the attention of the interrogator and of the arbiter.

The question was asked time and time again, "Is it possible that these documents were mislaid?"

We were advised yesterday for the first time that three unusual burglaries took place at the office of Jay Wright just at the time that the document had been delivered by Judy Ahlstrom to those premises. The offices on Commerce Street in which this letter was kept was ransacked; drawers were rifled; a fireproof safe was forced open and the contents were examined, and even the combination of the safe as far as the lock was concerned was chiseled off.

When the employees got to the premises, they saw that it was in a state of disarray. And yet, when being asked about these questions, Mr. Wright did not even give us a hint that there was a possibility that the crucial piece of evidence, the April 11, 1980 letter, could have disappeared.

Now, this was verified last night by a phone call to the Las Vegas Metropolitan Police Department as far as burglaries on those premises.

The first burglary occurred on July 3, 1980, and it is given an identification of Metro—which is an abbreviation for Las Vegas Metropolitan Police Department—DR—which is daily report—80-57839.

The second burglary took place December 24, 1980, Metro DR80-96602.

And the third burglary took place on January 12, 1981.

These burglaries occurred notwithstanding the fact that the operators of the business—and there were two businesses, by the way, which we did not learn about, which were on the same premises—of another accountant—and both of these businesses, you will recall, when the move—there was testimony that a move took place, where we thought the letter was misplaced or lost, and Mr. Wright indicated that only three or four persons participated in that move. There will be evidence before you through the testimony of Mr. Ken Swanson that the other office as well participated in the move at the same time because both offices relocated. The reason they relocated is no matter how much security they established on those premises, it was not enough; the employees were afraid to go to work alone, and they went to substantial expense to go to a different location.

Now, Mr. Chabraja, in answer to Senator Bingaman's question as far as the issue of willfulness, suggested that part of the function of the trier is to draw reasonable inferences. I submit that based on our allegation that a burglary took place of Judge Claiborne's home, that this just lends credence to the type of conduct that we suggest took place as part of the Government vendetta against Judge Claiborne.

Now, we are going to have Mr. Wright—you will recall I did not excuse him; he is still under our subpoena—I anticipate that we will call him as the first witness, and I do not know whether he is present with us today in attendance, but I am going to be very interested to hear why he did not tell us about these burglaries.

No. 2, I would suggest that as part of the allegation as to perjury, that it is necessary for us to call forward the agent who was responsible for working up the testimony of Mr. Wright—the gentleman's name is Donald Skelton. He is the primary IRS agent. Secondary in that capacity was an FBI agent by the name of Richard Gessinger. The record which you have before you indicates that an unusual procedure took place where Mr. Skelton was acting in a dual capacity. He was deputized, in effect, from the IRS to the FBI for purposes of the Claiborne investigation, so he could act as a, quote, "agent of the grand jury," end quote, which is one of our allegations, of which we were unsuccessful, saying that in and of itself deprived the grand jury system of its independence because it had, acting on its behalf, the executive. But we would anticipate that if we called those individuals, they would testify that in fact they did engage in an effort to shape Mr. Wright's testimony from prior documents. I would expect that one of two things took place, and I cannot in my proffer advise you which of the two. One of two things took place when Mr. Skelton and Mr. Gessinger were spending these hours preparing Mr. Wright.

Either Mr. Wright really did not remember that his office had three burglaries—and I would submit to you he was an incompetent witness if that is the circumstance—as far as competency, understanding the meaning of the oath and being able to relate facts. Or, secondly, he advised Mr. Skelton or Mr. Gessinger of these burglaries. In your inspection of the in camera documents, if that is the case, you will find one of two things. You will find either there is a report which was not made available to the defense at the time of trial, which would have permitted us to explore these issues and to raise questions concerning the fourth amendment; or you will find that there is not such a document. If there was such a document, the Brady Rule, the rule of exculpatory evidence being made available to the defendant, if there ever was an example, was violated.

Secondly, the second issue, as far as the use of perjured testimony. Depending on your perception of how the criminal justice system in this country is to work, whether or not you believe that there can be an attenuation of a situation at a particular point—for instance, let us assume that there could not have been a grand jury indictment of Judge Claiborne but for the Joe Conforte testimony in Reno. Should we then explore the beginning, the inception, the seminal proceeding, which led to Judge Claiborne going to court?

If in fact we should explore that, then I would submit certain witnesses should be called in order to ascertain whether or not perjured testimony was presented to that grand jury, and on a secondary level whether or not the prosecution knew that perjured testimony was to be presented before the grand jury.

If you take the position—and I would respectfully request you not to—as the House would ask you to do, to limit the scope of your inquiry to the trial which took place which led to Judge Claiborne's acquittal on the ethics count, but his conviction solely on the tax counts, I cannot represent to you in any candor whatsoever that there is perjured testimony other than if you would accept the machinations involving the treatment of Mr. Wright as being unintentional perjured testimony, if there is such a thing. I cannot represent to you that testimony of that nature was utilized during the actual trial proceedings. But I can represent to you that if you adopt the first level, which I submit to you should be of great national interest and of concern to this esteemed body, and that is that there was the use of perjured testimony at the grand jury, then we would suggest the following witnesses and the following offer of proof.

The primary witness would be Mr. Steven Shaw. Steven Shaw was an attorney who represented the Public Integrity Section of the Department of Justice and was primarily responsible during the initial stages as well as during the trial stages for the Claiborne project, for lack of a better term.

Mr. Shaw was the attorney who sought out Joseph Conforte and actually had negotiations with Mr. Conforte while Mr. Shaw was on his honeymoon, either in Puerto Rico or Rio de Janeiro, but when Mr. Conforte was acting as a fugitive out of the country, and it was Mr. Shaw who was acting in concert with Mr. Yablonsky, the special agent in charge of the FBI in Las Vegas, and with representatives of the IRS, Mr. Banbury, in order to cut the deal as far as Joe Conforte was concerned. And that deal has been expressed to you time and time again, what we consider to be the most unconscionable contract made in modern times with a Federal fugitive.

Mr. Shaw presented testimony before the grand jury, our proffer would indicate, which he in fact knew was perjured.

I submit to you—I submit to you that if in fact the Rio-2 statements, which have not been made available to the defendant by way of the discovery process or examined by you, based on my reading of the grand jury transcript, you will find that Joe Conforte told Steven Shaw that the alleged bribery activity of which Judge Claiborne, for which he was charged, took place at a time outside the statute of limitations.

As you are all aware, there is a 5-year statute of limitations in criminal offenses. Based on the type of questions that were asked, I predict that Mr. Conforte indicated that the bribes took place in November of 1978. Mr. Conforte did not cut his deal until December of 1983 when he appeared in front of the grand jury, and Mr. Shaw intentionally refused to ask him questions as to when the bribe took place and pin him down, because Mr. Shaw knew that Mr. Conforte would give him an answer that it took place at a time which was not within the statute of limitations.

I make that a prediction, and it is a prediction of which I will not be wrong if we are given the opportunity to explore it, because of the nature of the questions and what took place at Judge Claiborne's first trial.

It was outrageous the way we were not advised as to the particular date that the offenses allegedly took place. We were placed in a position where Judge Claiborne had to defend in that first trial activity which was alleged to have taken place 5-plus years before, during a particular time period which spanned 1 week, the prosecution, once they said it was December the 12th that the bribe took place—and you understand that the statute was cut off at December 8. When we brought our witnesses forward, we had a Department of State official who proved beyond equivocation that Conforte was not even in Reno; he was back in New York at the time; he could not have done what he said he did.

"All right," they said, "well, we were wrong. It wasn't December the 12th, it was December the 10th." And then, when Judge Claiborne was able to prove beyond any doubt that he was having dinner at the time the alleged bribe took place with a Nevada supreme court justice, they went to December 11, and they just tried to create a situation in which they had to have known, that they had to have known was encouraging perjured testimony on the part of Conforte.

Another example—and I do not want to belabor the point but I think it is so important. The crucial location that the bribes—and Judge Claiborne was not convicted of the bribes, but this just goes to the issue as to the type of governmental over-reaching—the crucial location where the bribes supposedly took place was in an apartment building in Reno, NV. Conforte was in that building. No question about it. Conforte described an apartment in that building with having an opening in the kitchen area where he would not discuss the amount of money that Judge Claiborne was supposed to get for the bribe, so he wrote it down what he wanted, and he handed it through this opening and gave it to Judge Claiborne, and Judge Claiborne would shake his head and then put it into the oven and burn it. That was his testimony. The FBI agent went to the—Mr. Wicks went to the apartment with Joe Conforte, and he saw this opening, and everything was just the way Joe Conforte said it, just the way the FBI wanted it, just the way Mr. Shaw was going to present it.

It just turned out that——

The CHAIRMAN. Mr. Goodman, I do not want to limit you or be argumentative, but what we asked for was witnesses who would shed some light on any alleged use of perjured testimony to obtain Judge Claiborne's tax fraud conviction.

Mr. GOODMAN. Yes, Mr. Chairman. I am saying, as I stated in my prefatory remarks, it depends how that is interpreted by your honorable committee. If it is a tainting situation, then we submit that what took place as far as Conforte and the grand jury should be considered.

If you take the position that you are asking us about testimony at the trial which was perjured, with the exception of Mr. Wright, we have no testimony to offer along that line.

Perhaps I should go on to the next area, then.

If in fact you feel that the Conforte situation is not of particular interest at this point—although I submit to you if our system of justice is to survive—and once again, I do not want to make another speech—somebody has to stop it. And I am at the end of the line on the Claiborne case. I cannot go any further than the Senate.

The question as far as the intimidation of witnesses, which is the second area. We would submit that a proper——

The CHAIRMAN. Well, if you feel that this is so important, the Conforte area, although that was not involved in the second trial——

Mr. GOODMAN. There was no proof of Conforte in the second trial, that is correct.

The CHAIRMAN. If you can wind that up in a minute or two, and then we can move along.

Mr. GOODMAN. I sure can, certainly.

The evidence showed that Judge Claiborne, in fact, when he was considering his calendar, as he had been transferred from Las Vegas, which was his place of residence, up to Reno for a period of about a year, and he had to live in an apartment which was down the road from the courthouse, he lived in that apartment building that Conforte described with particularity, but he lived in a different type of floor setup. In Judge Claiborne's apartment where this bribe supposedly took place and of which Joe Conforte was so familiar, there was no passthrough. It could not have taken place the way Conforte indicated. And yet the FBI agent went forward with the charade to suggest that in fact the bribe did take place in the apartment that Joe Conforte was describing. And if it was not an intentional deception on the part of the prosecution and an act of willfulness, which I believe it was, then it would have to be, at the very, very least, gross negligence.

On the issue of the attempts to intimidate witnesses, Jerry Watson is the tax preparer for the 1980 tax return. Jerry Watson, if called—as you understand, he is on our witness list as a witness right now on the issue of the taxes. I would respectfully request that we be able to expand our inquiry of Mr. Watson to include the areas of witness intimidation, which is the second category that I was asked to address.

Watson will testify to a confrontation with representatives of the Justice Department, those representatives being Richard Gessinger of the FBI; Don Skelton of the IRS; and Steven Shaw of the Public Integrity Section.

I believe as part of the record which you have before you is a motion which we filed on a post-trial basis, titled, "Motion to Vacate Judgment and Sentence for Evidentiary Hearing and for Discovery Proceedings in the United States District Court for the District of Nevada in Case Number CR-83-57." And that motion was filed after the trial, and attached to that motion were several affidavits.

For an expansion of my comments, if you would be interested, I would commend your attention to the affidavit of Jerry Watson which is attached to that motion. But in essence, Mr. Watson, who would appear voluntarily, would testify that he did prepare Judge Claiborne's 1980 income tax return. On March 8, 1983, he was served with a grand jury subpoena from a Federal grand jury sitting in Portland, OR, which said grand jury he determined was investigating Judge Claiborne.

Now, that in and of itself is unusual, because Judge Claiborne, of course, was a Nevada resident, and the only jurisdiction which would have power to investigate a tax violation of Judge Claiborne would be the District of Nevada.

However, the grand jury in Portland subpoenaed Mr. Watson for all of his records which concerned Judge Claiborne. And as long as Mr. Watson was cooperative, everything was fine. As soon as he became resistant, then the Internal Revenue Service, the evidence would show, became sarcastic and hostile, accused Judge Claiborne of accepting a bribe from Joe Conforte to Watson, and asked Mr. Watson about it; told Watson that he had better familiarize himself—now, this is a person who is not a suspect or a target; this is a tax preparer who is being talked to for the second time by Federal agents—to write down 18 U.S.C. 1001 and 26 U.S.C. 7206. 1001, as you know, is a false statement statute to a Federal official; 7206 are tax violations—and told that he had better become familiar with both of those statutes before he testifies.

Mr. Watson refused to, based on those circumstances, cooperate any further. And then they wanted to know whether or not the Judge had even paid him for the tax work, or whether or not he "comped"—that is a Las Vegas phrase—gave a complimentary tax return to the Judge.

On March 16, he arrived at the Federal building in Portland, he would testify, and was approached by Agent Skelton, who separated him from other witnesses, moved him to three different locations. Another Federal agent came in. Even though he brought his tax records with him, they started to become sarcastic to him. They detained him in the conference room. They would not let him say that he did not think that Judge Claiborne would ever have taken a bribe from Joe Conforte.

They actually, in his words will say, they made him into a physical wreck, and went into the grand jury room.

He was next subpoenaed for a grand jury appearance on June 8, 1983. Once again, the IRS and FBI agents both came to his office unannounced. They walked in when he was talking to a client, did not even have the courtesy to wait. So Watson excused his client. They started to ask questions about a Charlotte Travaglia, who will be a witness here, who had done much work on Judge Claiborne's return.

The next day, Skelton came to the office alone. He warned him that he better not have forgotten anything in his file. Once again, Watson went up to, this time, a Reno grand jury, and he was told by Skelton that he had better be careful. And at this point in time, he asked, "Am I the subject of an investigation?" He had been abused by these people so much that he finally had to ask whether he was a target, and he was advised, he will testify, that they are not aware of his being a target of an investigation at this time, and, "You will be advised should you become a target."

They told him they do not want to see him get into any trouble. They do not want him to go out on a limb for Judge Claiborne, because Judge Claiborne is just going to leave him hanging there and walk away, and he is too smart to fall for that, and no one will save him or help him. And they also said that they spoke to Ms. Travaglia, and if he knew what she said, that he would be very, very surprised.

Now, under that set of circumstances, and with that type of brainwashing—and Watson will do it a lot better than I—Watson went in to the grand jury, and he was asked whether or not Judge Claiborne ever provided to him the information concerning fees earned by Judge Claiborne in 1980 from Judge Claiborne's private practice before he went on the Bench, and Watson said no.

Watson then returned to Las Vegas, and he called Judge Claiborne and told him of his grand jury appearance, and Judge Claiborne said to him, "Mr. Watson, you have just indicted me."

As a result of that, Watson had his recollection refreshed and was shown a document which will be part of the evidence in this case, a total financial disclosure which Judge Claiborne made, which Charlotte Travaglia will testify to, which was utilized in the preparation of Judge Claiborne's 1980 tax return, where it shows that he earned $88,500 from his private practice. And at that point in time, Watson did what a citizen is virtually required to do under 18 U.S.C.—I believe it is 19—well, it is the perjury statute, the false statement statute, where he has to recant. He sent a telegram immediately to the prosecutor, Mr. Shaw, and told him, "I have got to rectify my wrongful testimony in front of the grand jury." And that took place on June the 9.

On June 15, 1983, at about 5 p.m., Watson will testify that FBI Agent Gessinger and Special Agent Halper came to his office, and Halper stated—and Halper is arrogant—"I guess you think you are some kind of smart S.O.B. and that you know how to cover your rear end." And he was not as nice as I am. And he yelled about the telegram being sent as part of a conspiracy between Watson and Judge Claiborne. And Watson then did something that perhaps he should have done a long time before in dealing with these folks, he said, "I have to call an attorney."

He was threatened. They told him, "How come you were so * * * willing to talk so * * * freely in the past, and you go around shooting your * * * mouth off to the press, and now, all of a sudden, you don't want to talk without your attorney being present," and threatened him that they would be back.

Watson then hired an attorney. And the attorney, Lawrence Semenza, who is present and is ready to testify, a former U.S. attorney for the District of Nevada who resides in Reno, who has an impeccable reputation as far as integrity and honesty is concerned, represented Mr. Watson. Mr. Watson went up to appear in front of a July 28 grand jury, and at the time that he went up there, Mr. Simenza asked Mr. Shaw, and it was a perfectly proper request, for a copy of Watson's prior grand jury testimony before he went in. He was declined the same. And at that point in time, Mr. Shaw, in the presence of Mr. Watson, said to Mr. Semenza, "You should inform Mr. Watson right now that he is a target of this Federal grand jury investigation, and you should inform Mr. Watson of what that fact means."

When Mr. Watson returned, having been advised as to what can happen to you if you are not one of the good guys, he arrived at Las Vegas at the airport, and Mr. Halper is waiting for him again. And Mr. Halper accuses at that point in time—and you talk about a chilling effect, as far as our Constitution is concerned, between an attorney and a client—he says to Mr. Watson, "Harry Claiborne is paying Simenza, and Simenza is Claiborne's attorney. You are digging a deep hole for yourself. You are a liar. We can prove it. Your attorney, Simenza, better make that damn clear to you, and you are in big trouble." Mr. Watson will testify to that.

Charlotte Travaglia, who was Watson's employee, will testify that when the IRS agents came out to see her, to interview her about the information that Judge Claiborne provided and the information utilized in the preparation of the return that she was working on, the 1980 return—she is present.

She is the woman who was ill and during this illness was being questioned not only by the prosecution, but also by the defense attorneys, to ascertain what in fact took place so they could determine whether or not she could be utilized as a witness.

She will testify that the IRS agents specifically told her that—she took the position with them that, "My goodness, I am familiar with this situation. No question, Judge Claiborne provided our office with what are referred to as 'yellow sheets of paper', the legal pad which contained on it the $88,000 income, and all the information concerning the sale of his home and the W-2 information. Yes, he gave that to us, and Watson was the one who was responsible for preparing the return. I am the one who was working on it." It was not—the essence, the theme, of what she was telling these IRS agents who were investigating this, was it is not the taxpayers' fault; Mr. Watson is careless.

And she will testify that they just did not want to hear anything like that; they just wanted her to answer the questions specifically and directly. And she will testify that they told her not to volunteer anything at all.

And she was afraid, because in Nevada, there is constantly a—she will testify to this—there is constantly a battle going on between the IRS and the employees in the State's primary industry, gaming, where there is a conflict as to whether or not tips received by various gaming employees, dealers and the like, should be declared as income. And the way many of these tax preparers or auditors make their living is by representing the wage earners, the tip earners. And she has been in audits like that; she knows the power of the IRS; she knows how that could affect her livelihood. And she took the position that they could cause her serious problems, and she was not going to volunteer anything.

Another witness who will testify on the issue of intimidation is Larry Simenza, as I indicated, the former U.S. attorney, who will state—and he did state outside the presence of the jury in the criminal proceedings—exactly what happened as far as the threats, the rude and crude handling that Jerry Watson received when he was not doing what the Government wanted him to do against Judge Claiborne.

Another witness as far as threats are concerned, and a crucial witness, which gives a real flavor for the way the investigation was conducted from its inception, is a high-ranking Government official by the name of Gerald Swanson.

Gerald Swanson presently resides in Dallas. At one point in time—and I am not sure I am going to help myself or my witnesses if I am permitted to do this, because of my candor—but at one point in time, Gerald Swanson was more than willing to make full disclosures to me, representing Judge Claiborne as far as what took place with the IRS and the type of pressures which he was subjected to because he took a certain position in the investigation concerning Judge Claiborne.

Since that time, he has not been as cooperative. But basically, if placed under oath, Mr. Swanson will testify that he was the former District Director of the Internal Revenue Service in the District of Nevada; that he was asked in that capacity by his colleagues in the IRS, as well as Joe Yablonsky, the special-agent-in-charge of the FBI, who had a mission, an announced mission, to get Judge Claiborne—and even though it is not part of the proffer, there are witnesses who would testify that they would walk into Yablonsky's office and did not even know the man; here was the highest ranking Federal law enforcement officer in Nevada pointing to his wall and saying, "I'm going to have Claiborne up there, too." He had pictures of various sting operations where he had participated in the past around the country.

"I am going to get that"—and then he would describe him either as a drunk or a womanizer, but certainly in a contemptuous manner of the Federal judiciary.

Swanson will testify that he would not go along with the program that Yablonsky needed to have approved in order to make his deal with Conforte because, as I indicated yesterday, Conforte had an outstanding tax liability of some $23.5 million, give or take a few, and part of his deal as a fugitive was, "If I am going to come back and I am going to testify against"—and this is interesting—"not only Harry Claiborne"—that has been lost in the shuffle—"I am not only going to testify against Harry Claiborne, I am going to testify against other Nevada officials, and if I am going to come back, you have to sweeten the pie, and part of the sweetening besides my criminal penalty is you have got to resolve my tax problems."

Gerald Swanson took the position that as a representative of the IRS, "I am not going to approve a deal like that with a person like Conforte," who ran a house of prostitution up in the northern Nevada area, a man who was a fugitive. "I think it is unconscionable."

And the evidence will show that when he took that position, the tables turned on him; he became the target of a sting operation involving two brothers up in Reno, NV, called the Lembers brothers, one of whom was a decorated Green Beret. He was called in front of the grand jury. Swanson was advised he was a target in a bribe attempt that supposedly concerned Swanson taking money in order to provide information about Conforte. And Swanson was never indicted, but maybe there are things not as bad as indictment that the Government can do to one of its own when it does not cooperate. They shipped him down, demoted him, sent him out of the State, and he is now in some lesser capacity in Dallas, TX, with virtually a broken life, because he would not cooperate with Mr. Yablonsky and the Justice Department.

Eddy LaRue will testify. Eddy LaRue—and this is still on the issue of intimidation, Mr. Chairman—Eddy LaRue was a private investigator in Las Vegas, NV. As a matter of fact, he was the prototype for the Vegas program with Mr. Tannow that you see on television. And Mr. LaRue was a good friend of Harry Claiborne, and Mr. LaRue was contacted by the Government and advised in April 1980 that he was the subject of a grand jury investigation.

Now, once again, that is the same April 1980 that the letter that we were discussing yesterday, the April 11 letter was sent, as far as Judge Claiborne's frame of mind was concerned.

Eddy LaRue was indicted. Now, he was indicted for illegal wiretapping. There is nothing wrong to indict somebody if they should be indicted. And I hope if I am ever indicted, I will be indicted properly by the U.S. attorney in the District that I allegedly committed the crime. But Mr. LaRue was indicated not by his own, but rather, henchmen who were sent out from Washington, representing the Public Integrity Section, who had no business whatsoever under their guidelines and their standards to indict a Nevadan unless his activity was related to a violation of some Federal position.

A special judge was appointed, which is interesting, because once again, we get into the Claiborne area, even though none of the allegations in the indictment suggested that Mr. LaRue was conducting any illegal wire-tapping for Judge Claiborne; these were acts independent of Judge Claiborne. Mr. LaRue had a special judge appointed to him, Judge Aldon Anderson from Salt Lake City, and Judge Anderson came down. Mr. LaRue had all of his character witnesses lined up. He had nine character witnesses from Las Vegas, NV there, ready to testify about his integrity and his honesty. And 3 days before the trial, because it was not going the way the Government wanted, because they wanted Mr. LaRue to "flip"—and he will so tell you—they wanted him to testify against Judge Claiborne and avoid the expense and the ignominy of going to trial. He would not do it. The trial judge felt it was unseemly to try Mr. LaRue in the U.S. Federal Courthouse in Las Vegas, NV, and removed the case on his own motion to Reno, NV, so he would not have to try the case "in Judge Claiborne's courtroom." Those are the words of Judge Anderson. He did not want to try Eddy LaRue in Judge Claiborne's courtroom.

Eddy LaRue went to trial. He had a good lawyer—it was me—and he was acquitted. He was lucky, though, because during the course of the trial, he was told by the strike force attorney—Mr. Reich is his name, R-e-i-c-h—and I do not even remember the name of the other lawyer—he was told by Mr. Reich in the presence of the other lawyer that he could avoid the trial, he could avoid the potential of going to prison for 25 years—and that is what they were going to ask for—if he would say that he conducted illegal wire-tapping for Judge Claiborne.

Now, if that is not intimidation, I do not know what intimidation is, but Eddy LaRue was not going to lie. Eddy LaRue said, "I cannot tell you anything about Judge Claiborne and wire-tapping," and he went to trial, and the jury acquitted him.

The next person who gets intimidated is a gentleman who is present—oh, by the way, LaRue will come here. He will not have to be subpoenaed. But he is in Las Vegas, NV.

The CHAIRMAN. But what can he tell us about attempts to influence tax witnesses?

Mr. GOODMAN. Once again, as far as being a tax witness, other than Swanson, Travaglia and Watson, as far as the tax witnesses are concerned, those are the only ones who testified.

The reason that I reference these people is to create the true picture as to how far the Government would go in the shaping of the testimony even as to these tax witnesses and their handling of other witnesses along the way during the course of the investigation.

The CHAIRMAN. Since I interrupted you once, I will do it again, to suggest that you have about 14 minutes left.

Mr. GOODMAN. Thank you, Mr. Chairman.

Chuck Lee is present. He works for the Clarke County district attorney's office. Las Vegas is the county seat of Clarke County.

At the time in question, he was employed by the Las Vegas Metropolitan Police Department. He was their chief calligrapher. He gave the lie detector tests.

When Judge Claiborne read in the newspaper that he was the subject of an investigation where he was being investigated for wire-tapping through Eddy LaRue, he went to Chuck Lee, and he asked Chuck Lee to give him a polygraph exam. Chuck Lee gave him a polygraph exam. Judge Claiborne passed the polygraph exam. From that point on, Chuck Lee's life was ruined.

Chuck Lee became a target himself of the Federal Government. Chuck Lee was fortunate enough because he had a lawyer other than myself who filed a Freedom of Information Act request, and in that Freedom of Information Act answer, Chuck Lee was advised that he was a target of an investigation, that his home was under a covert surveillance. Chuck Lee's home was broken into, and he was subjected to a burglary.

Thereafter, because he would not cooperate, he too was demoted and lost his position from that of a high-ranking police officer to that of a desk job.

The question as to the burglaries, which is the third area that I was asked to address.

The burglary had as its object, the evidence would show, the search of Judge Claiborne's home in a planned community in Las Vegas called Spanish Oaks. It is our contention that Judge Claiborne's home was in fact searched, and during the search photographs were taken of this personal financial diary which was ultimately subpoenaed before the grand jury and produced by Judge Claiborne, which led to a complete disclosure of all of the moneys which Judge Claiborne had earned from all sources over the several years which preceded the issuance of the subpoena.

The following witnesses would testify as to the burglary, both of whom would have to be subpoenaed. One is a gentleman by the name of Cliff Isbell, I-s-b-e-l-l. Last known—I was given a phone number for him in Los Angeles, but I have been advised that he could be reached and would be subject to subpoena. He is being represented at this point in time by an attorney by the name of Lamon Mills, a former U.S. attorney in Nevada. And Mr. Mills indicated that if Mr. Isbell were subpoenaed, he would come forward, and he would testify truthfully.

The other person is Mr. James Johnson. Mr. Johnson is located in Las Vegas, NV. He does not have counsel. He is presently in what is referred to as a halfway house, having been released from a correctional facility. And he is willing to come forward.

Basically, the essence of the testimony of both Mr. Isbell and Mr. Johnson would be to the effect that they were acting in concert with the Las Vegas Metropolitan Police Department hit squad, in effect, a squad set up to target politicians, acting with representatives of that police department who were closely in association with Mr. Yablonsky; that they had meetings with Mr. Yablonsky; that they, with a Las Vegas Metropolitan Police Department official and with an FBI agent, went to Judge Claiborne's home, they entered the home, that certain pictures were taken, and that this was done covertly, subversively, and of course in violation of the fourth amendment.

Now, once again, I do not want to ever misrepresent anything to you. I have in my possession an affidavit which is attached to that same motion that I described to you before for the 2255 or new trial, which was filed subsequent to the verdict. In that motion, or attached to that motion, is an affidavit. The affidavit is from James Daniel Johnson. It was obtained on April 29, 1986.

Mr. Johnson sets it out, A, B, C; he does not leave anything to the imagination. I cannot vouch, and I would not vouch for his credibility, because I do not know Mr. Johnson personally. I cannot vouch for Mr. Isbell, although Mr. Isbell came to my office, and he admitted to me that he was involved in the burglary. And I have independent—should he deny that here today, I have got evidence that I can have him here, where he made that admission. If in fact that took place, and if it took place, as they suggest, with the FBI in effect directing it, nothing is worth that cost.

As far as the witnesses, Mr. Chairman, that is basically—we have some other witnesses, for instance, an ancillary one, a gentleman by the name of Andy Granby Handley. He is in a witness protection program at this point in time. He indicates that an FBI agent—and he specifies who that FBI agent is—came to him in around 1980 and asked Handley, who was familiar with Judge Claiborne, to provide to the FBI the floor plan of Judge Claiborne's residence which was sold and the subject of Mr. Wright's testimony yesterday.

Interestingly, if we were allowed to even expand this further, the FBI agent who is alleged to have participated in the break-in of Judge Claiborne's home, which was at a different location than the Rancho Road one, as I indicated, at the Spanish Oaks home, that same FBI agent would testify if called under oath, and he has in the past—his name is Steven Rybar—that he went to Judge Claiborne's home on Rancho Road and acted in a capacity where he represented to Judge Claiborne that he wanted to buy the home, and Judge Claiborne had him shown through his home.

Mr. Rybar, on a prior occasion, is not sure, he has indicated, whether or not he ever visited the home of Judge Claiborne in Spanish Oaks.

The CHAIRMAN. Mr. Goodman, do you have an affidavit from Mr. Isbell?

Mr. GOODMAN. I do not. I have an affidavit, which is attached, from a gentleman who is present in court today, who would testify if in fact Isbell was called and denied it, as an impeaching witness, a gentleman by the name of Lake Headley. And Lake Headley's affidavit is in fact attached to that same pleading, and he sets forth in specific detail conversations which he had with Mr. Isbell.

Paragraph 20 of that affidavit states: "Mr. Isbell told me that he had been treated as, quote, 'another officer,' end quote, by both Sergeant Caputo and Commander Ken Clifford and had been allowed access to all secret files maintained in Commander Clifford's private office, as well as Sergeant Caputo's political squad files."

Now, that sounds like an incredible statement, but that same statement is a matter of record in the civil case under oath, in a deposition in Las Vegas, NV.

In addition, Mr. Headley had Mr. Isbell tell him that he attended a high-level intelligence meeting held in the Showboat Hotel, which is located in Nevada, shortly after FBI special-agent-in-charge Joseph Yablonsky came to Las Vegas. "Mr Isbell told me that officers from Federal, State, and local enforcement intelligence agencies attending the above meeting held at the Showboat, were there for the purpose of meeting with special-agent-in-charge Joseph Yablonsky to plan future intelligence operations."

He lists the various operations. Then, Mr. Isbell states to Mr. Headley that, "If you want to talk to somebody else regarding Claiborne's burglary, why don't you ask Jim Johnson? He was there."

And then, Mr. Headley goes on to state, "Mr. Isbell told me that this FBI agent Isbell and James Johnson were driven to Spanish Oaks by Metro Sgt. Dennis Caputo in a Metro van," describes it, that they entered the home, that he acted as a lookout, and that photographs were taken of Judge Claiborne's financial documents while the agent was in the home.

The **Chairman**. Is the reason you have the Headley affidavit because you were unable to get one from Isbell?

Mr. **Goodman**. Yes, sir. I had Isbell in my office. I asked him whether or not he would make a complete statement to me, and he was very evasive, but at the same time during the course of that conversation, he said, "Yes; I was at the burglary."

The **Chairman**. Now, in your statement this morning, you have mentioned what I may call the "shaping" of Mr. Wright's testimony. You have mentioned the perjury on the Conforte counts, which you assert tainted the proceedings even at the second trial. And you have mentioned the prosecutorial pressure on Jerry Watson and on Charlotte Travaglia and Gerald Swanson.

Were any of these issues raised on direct appeal?

Mr. **Goodman**. May I have your indulgence, please?

The **Chairman**. Yes.

[Pause.]

Mr. **Goodman**. Mr. Chairman, the issue of the use of Joseph Conforte's testimony was in fact related on direct appeal—was raised on direct appeal.

The **Chairman**. And what was the disposition of that issue?

Mr. **Goodman**. We were unsuccessful on the appeal.

The **Chairman**. All right.

Mr. **Goodman**. The Swanson issue was referenced in the appeal.

[Pause.]

The Watson issue was related collaterally on the appeal, and as far as Travaglia was concerned, we did not find out the information from her until after the appellate process was exhausted.

The **Chairman**. Thank you very much.

Senator **Heflin**. May I ask, were these raised on a motion for a new trial, or some motion which prior to the appeal was incorporated into the direct appeal?

Mr. **Goodman**. They were raised on pretrial motions.

Senator **Heflin**. Pretrial?

Mr. **Goodman**. Pretrial motions. And Judge Hoffman said that they were irrelevant and would not give us an evidentiary hearing. We have never had an evidentiary hearing on any of these issues.

The **Chairman**. Thank you, Mr. Goodman.

We will now ask counsel on the part of the Managers for the House to——

Mr. **Chabraja**. Mr. Chairman, would it be appropriate if I was able to caucus for 5 minutes with the House managers, since we have just heard this information orally, or would that be disruptive of the Chair's plans?

The CHAIRMAN. Well, we will have to adjourn promptly at 11:30.

Mr. CHABRAJA. We will not need our full hour, I can assure you, Mr. Chairman. If we can be back in at 11, we will dispose of this well within the half-hour.

The CHAIRMAN. All right. We will give you 5 minutes.

Mr. CHABRAJA. Thank you. I appreciate it.

The CHAIRMAN. I would ask everyone not to stray.

We are in recess for 5 minutes.

[Short recess.]

The CHAIRMAN. We will now hear from counsel on behalf of Managers for the House.

Mr. GOODMAN. Mr. Chairman.

The CHAIRMAN. Mr. Goodman.

Mr. GOODMAN. Pardon me, Mr. Chabraja.

If I may, I misunderstood Senator Heflin's question and as a result, I misspoke myself.

Your last question, I thought, concerned whether or not allegations were raised as far as the search and seizures at some type of appellate level.

The status of it is that it has not been judicially determined at this point in time and is the subject of a postconviction writ, which has not yet been heard by the trial judge.

Senator HEFLIN. Well, then, it was not taken on direct appeal as to your answer to the question of the chairman?

Mr. GOODMAN. Mr. Chairman, as far as the search issues, they were never taken on direct appeal. The issues as to the Conforte perjury and the Swanson pressure were referenced on the appeal.

Senator HEFLIN. Well, how was the intimidation raised of the various people, Mr. Watson and others? How has that been raised?

Mr. GOODMAN. It was raised pretrial, and there was never a hearing on it. There was a hearing outside the presence of a jury, where Mr. Watson testified and Mr. Simenza testified, and it was not permitted to go to the jury.

Senator HEFLIN. Well, what has been really raised on direct appeal on which the chairman asked you a question?

Mr. GOODMAN. The only issue that has been raised on direct appeal and answered on direct appeal is the use of perjured testimony before the grand jury which resulted in the indictment, and that was ruled against Judge Claiborne by the appellate panel.

The CHAIRMAN. Senator Pryor has a question on that.

Senator PRYOR. Yes, sir. You stated in your opening statement about three alleged robberies, or burglaries, of Mr. Jay Wright's office, the accountant—July 3, 1980, December 24, 1980, January 12, 1981.

One, is this new evidence?

Mr. GOODMAN. In answer to the question, it was evidence which was brought to our attention for the first time within the last 12 hours.

Senator PRYOR. These three robberies, or alleged robberies, have never been the subject of an issue in the preceding court trials or jury considerations whatsoever?

Mr. GOODMAN. There was not even a question directed to it.

Senator PRYOR. And, two, do you have any proof that the U.S. Government caused these burglaries to take effect?

Mr. GOODMAN. I do not have any proof of that. I do not have any proof they did not.

Senator PRYOR. Thank you.

The CHAIRMAN. Thank you, Mr. Goodman.

Mr. Chabraja.

Senator HEFLIN. On that, let me ask you this. In regards to your telephone call to the police department in Las Vegas where you gave us the police file number on it, was the report of those burglaries read to you over the phone, was there any indication from those that the Government might be involved, or—well, I will ask you this. Are those unsolved or solved burglaries?

Mr. GOODMAN. May I have your indulgence for one moment? I did not place the phone call.

The CHAIRMAN. Well, you are going to go into this with Mr. Wright, aren't you?

Mr. GOODMAN. I was going to; yes.

The CHAIRMAN. Perhaps——

Mr. GOODMAN. I did not make the phone calls.

The CHAIRMAN. Well, is it possible for you to answer Senator Heflin's question, then?

Mr. STUHFF. To our knowledge, the burglaries are unsolved, Senator Heflin.

The CHAIRMAN. All right. Thank you, Mr. Goodman.

Now, Mr. Chabraja.

Mr. CHABRAJA. Mr. Chairman, Senators, Mr. Goodman, there is not much that we heard today that is new.

We have received from Mr. Goodman during the course of these pretrial proceedings at least four pleadings that I recall. The most extensive is the preliminary pretrial statement, which pretty much modeled his remarks today, and a motion that he designated "Motion for Full Trial," where he recited this same litany, largely, that we heard today.

We finally responded to that in writing in two pieces of paper, which we submitted to this panel. The first was a memo, a lengthy memo, in opposition to that motion designated a motion for a full hearing, where we took this evidence that was alleged in general terms in the pretrial statement and in other pleadings and tried to deal with it for you and put it in some context that made sense—and I will not repeat that.

But one of the things that we recognized in those early pleadings was that at least at first blush, this all seems largely irrelevant to the subject of underreporting income tax and the willfulness of that act.

But the House of Representatives, in order to be responsible, did not want to come to that too quickly and dismiss this series of allegations as collateral and spurious without giving it some thought. We recognize that there were some allegations of hardhearted prosecutors who for some reason intended to selectively prosecute Judge Claiborne, and we recognize the fact that there were some allegations that that evil motive resolved itself into misconduct.

But what we could never see, and what we pointed out to you in our pleadings was there never have been the next step in the logical syllogism, that this selective prosecution and some Government misconduct, albeit vaguely described, somehow impacted on that trial and on the credibility of the witnesses and on the proofs that were heard and on the result that was obtained in front of that jury.

The same thing could be said with respect to the proceedings before this body, because largely you have received the same kind of proof from largely the same witnesses who appeared and testified at trial, at least insofar as the Government's case-in-chief was concerned in the proceedings in the judiciary, and the House Managers' case-in-chief.

We suggested in one of our pleadings that that link not only had not been established; it had not even been suggested. I think this panel largely recognized that that was true, and in response to our motion in limine, suggested to Mr. Goodman that he be permitted on behalf of the judge to make that link if he possibly could, to describe in his offer of proof with specificity, expected testimony—was there any perjured testimony that resulted in that conviction—for that matter, was there any perjured testimony before the Senate? Were there any attempts to influence testimony at trial that resulted in some measurable impact? If so, what was it?

There is a burglary issue. How did that impact on the trial? In what respect was some evidence obtained or manufactured that resulted in an untrue result, or for that matter, that permitted this body to examine some evidence that it should not have seen?

Well, we have listened. I did not hear anything that I had not heard before, other than the fact that some burglaries allegedly occurred in Las Vegas in the summer of 1980. But let us just deal with this in large categories.

We first, and I think foremost, have the allegation that there has been shaping of testimony of Mr. Wright. Let us also put that in context.

There has not been a case ever tried where counsel for the parties did not try and talk to the witnesses, talk to them about their testimony, and attempt to refresh their recollection from documents.

We have heard an awful lot about the 100 hours that Mr. Wright spent on this matter. He testified about that at the trial, the second trial. He testified fully and openly that he committed himself to 100 hours in this matter, and he testified about it here yesterday. He said that that had to do with being interviewed, grand jury proceedings, travel to and from Reno for two different trials, and being interviewed by Government witnesses, and for that matter, several hours of interviews by either Mr. Goodman or one of his associates. Nothing unusual or irregular about it; frankly, nothing unusual about Mr. Goodman suggesting it to the jury or suggesting it to you, for that matter.

But you also heard Mr. Wright. He testified pretty much exactly the way he did at the second trial, and he testified with respect to his recollection the same way. These questions really go to his recollection, and he is a standup, straightforward fellow, and he told you, "My specific recollection is not good, but I have records, and they have refreshed my recollection, or in the alternative, I have recorded my memory, and I have used these records to reconstruct what happened."

The weight you place upon that will depend on your evaluation of the weight of that evidence, the way the jury in the criminal case got to weigh it.

Now what Mr. Goodman talks about is a related issue. He says central to Mr. Wright's testimony is his statement, both in the criminal case and here, that he did not receive a letter dated April 11. He bases that, Mr. Wright, on his testimony that he has no recollection of ever having seen it, that it is at variance with the other documents in his file, and it is at variance with the way he prepared the return.

There has been a suggestion on cross-examination both in the criminal proceeding and in here that Mr. Wright was less than a careful collector of documents; that during the course of a move, he may have lost it. Nothing of probative value, but the suggestion is made.

Now we have the only new bit that has come up. We find out that Mr. Ken Swanson, former employee of Mr. Wright, who has been available to the defense from the opening gun, who they have interviewed before, who has filed affidavits on their behalf in the criminal case, now comes up with three unusual burglaries. That somehow is supposed to impact on Mr. Wright's credibility.

I do not recall that he was asked about burglaries. I do not recall that he was asked in the criminal case about burglaries to which he gave a negative response. I submit to you he was not asked about that subject at all, but I suppose, according to Mr. Goodman, that he should have volunteered that if he remembered it.

But what is it we are talking about? We are talking about burglaries that occurred in the summer of 1980, December 1980, and January 1981, if that is true—and I do not have any idea whether it is or it is not. But I suppose the inference Mr. Goodman wants to have us draw is that these burglars came into Mr. Wright's office, turned it upside-down and left everything in disarray, and then found the Claiborne tax file, which the testimony is intact, 100 percent intact, provided a lot of documents that you gentlemen have seen, and surgically removed a critical piece of evidence in this case.

That is one of the wildest, most speculative inferences to be drawn from a set of facts, even if they were true, in distinction to the testimony of the Wrights, with respect to their careful care of the records, their disposition of other records, and the current status of that file.

I submit to you that that suggested and proffered testimony is of no value in any event, but other than a figment, at this moment, of Mr. Goodman's imagination.

In any event, Mr. Swanson is on the witness list and certainly, this story does not expand that witness list or expand the issues to be framed here, and I submit to you, is wholly irrelevant, incompetent and not probative of the issue that Mr. Goodman suggests that it is probative of. He somehow wants you to believe that Mr. Wright, who his client by admission called a decent, warm and honest man—you heard that this morning—has somehow had his testimony perjured.

The next thing we talked about was the alleged use of the perjured testimony, and I did not hear anything about that in connection with the trial; I heard about it in connection with the grand jury proceedings, the whole Conforte allegation. One of the members of the panel asked perceptively if that issue had been raised on appeal. It certainly had been It was the subject of pretrial proceedings, and Judge Hoffman correctly ruled that that had no place in this trial. Rather than respond, I will risk boring you slightly by reading to you what the ninth circuit court of appeals had to say about this. I quote from page 792 of 765 Federal Reporter, second series:

> The Defendant has made no showing beyond mere speculation that Conforte gave perjured testimony before the grand jury or at the first trial, nor has he made any showing that the Government had any reason to believe that Conforte's testimony was perjured. Speculation cannot justify this court's intervention into the grand jury's proceedings
>
> Moreover, even if Conforte perjured himself before the grand jury, we note that Conforte's testimony related only to counts 1 through 4 of the indictment, and that the Government moved to dismiss these Conforte counts before proceeding to trial for the second time against the defendant.
>
> Thus, any perjury committed by Conforte before the grand jury was not material to the defendant's indictment on counts 5 through 7, and necessarily, not material to defendant's conviction on counts 5 and 6, which is the subject matter before you today.
>
> Indeed, according to the Ninth Circuit Court of Appeals, Conforte did not appear as a witness at the defendant's second trial. Under these circumstances, this court perceives no prejudice resulting from the presentation of Conforte's testimony to the grand jury. In any event, there can be no claim, and there is no claim, that there was insufficient nonperjured evidence to justify the indictment of the Defendant on the tax counts and the ethics counts.

And Mr. Goodman does not make a claim to the contrary today. He talks about "taint." He also says that this may be an issue of great national interest. Well, it may be. I suppose it is not for the House managers to determine what is of great national interest, but one thing we can tell you for sure—it is certainly not consistent with the purpose for which we have gathered, to determine whether these serious allegations against Judge Claiborne are true or false, and whether or not the public interest is served by his remaining on the Federal bench.

Then we hear about something that maybe disturbed me a little bit. I wanted to hear about it. That is the alleged intimidation of witnesses. We wanted to know if somebody testified at that trial and testified improperly because they had been intimidated. I certainly was concerned about the allegations of intimidation with respect to Mr. Watson, who is scheduled to testify here in any event, and I trust he will testify truthfully.

We heard about his confrontation with the Justice Department. I suppose there is another story to tell about that that I know, but I do not think the story is what is important. The fact is—and it is a fact that you have before you—Mr. Watson testified at trial. He did not testify for the Government. He testified for the defense. And he testified consistent with the defense's theory of the case. The defense's theory of the case at trial was that Judge Claiborne had given Mr. Watson all the tax information he needed to prepare an accurate return, including the yellow sheet that had 88,500 dollars' worth of income, even though that document was seriously questioned, as well it should be—when you look at it, you might question it, too. But Mr. Watson testified that he was in receipt of that information.

I do not know what more they could have gotten from Mr. Watson, or what more they would get if he says or his lawyer says somebody abused him along the road, because it certainly had no effect.

And I trust that this body will hear from Mr. Watson on the tax issues and make its own judgments about his credibility and the relevance of the evidence that he is about to give with respect to the tax issues, without venturing into a flight of fancy about "Who shot John?" during the grand jury proceedings.

Then we hear about Charlotte Travaglia, who allegedly was intimidated. I happen to know that Charlotte Travaglia was available to Mr. Goodman, that he had her under subpoena during the first trial and released her as she stood out in the hallway. Government did the same. Apparently neither side, as a result of their interviews, thought that Ms. Travaglia could make a meaningful contribution to the facts in issue. She did not testify at the second trial. We heard a little suggestion in the pleadings about her being ill and no representation that she was under subpoena, no representation that doctors' certificates had been obtained—no representation with respect to that effort at all.

In any event, Charlotte Travaglia is here, and she is going to testify presumably on the tax issues. And we do not need to concern ourselves with whether she has been intimidated.

The other witnesses that we heard about who were intimidated were a fascinating story—Gerald Swanson, Eddy LaRue, Chuck Lee—it sounds-like something out of the mystery novels that I read occasionally to obtain a release from the pressures of the day.

I do not know what any of those witnesses—and I still do not know—have to do with whether or not Judge Claiborne underreported his income and did so intentionally.

I suppose—we heard something yesterday during opening statement that is a little closer to the point. Judge Claiborne suggests that we should draw an inference that it would have been ludicrous for him to underreport his income, because he had knowledge of the fact that he was under investigation.

We did not hear anything about that today. And I suggest to you that even that is an inappropriate state of mind evidence.

Finally, we have the last issue, the burglary of the home—the alleged burglary of the home—relying on affidavits, one of which is hearsay, by people who are not here and who Mr. Goodman cannot tell us exactly what they will say because they are represented by counsel. But the one thing we have never heard about—we hear a lot of things about that burglary and how it happened and about floor plans and other things—but we have never heard how that burglary resulted in any evidence being obtained that was manufactured, inappropriate and less than the truth. We do not even know if any evidence was obtained, at least according to Mr. Goodman. He has not said one word about that. He raises the black bag, but he does not shake the document out of it. And we do not know, still, after hearing his proffer, what his theory of relevance is with respect to this case, other than a suggestion he made to you yesterday in response to direct inquiry, that you should inquire into this, and if you find out there was in fact a burglary, it should so shock your conscience that you ought to declare that all evidence emanated from that poisoned the fruit and tainted the entire proceeding.

I do not think that is what we are here to do. I do not think that is what the American people want to hear. I did not hear anything today that suggests to me that our motion *in limine* was not 100 percent proper for your consideration, and we urge you to rule upon it favorably.

The CHAIRMAN. Thank you, Mr. Chabraja.

The committee will stand in recess until 2 o'clock.

[Whereupon, at 11:30 a.m., the committee was recessed, to reconvene at 2 o'clock p.m. this same day.]

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

This is the afternoon session. At this point in the proceedings, the defense will call its first witness.

Mr. GOODMAN. Thank you, Mr. Chairman. We call Joseph Wright.

The CHAIRMAN. Mr. Wright, you will recall that yesterday you were sworn. Your oath is still binding in the testimony you are about to give.

DIRECT EXAMINATION

Mr. GOODMAN. Mr. Wright, what is your business address at this time?

Mr. WRIGHT. 1209 South Commerce Street, Las Vegas, NV.

Mr GOODMAN. And when did you begin to occupy that premises for purposes of conducting business?

Mr. WRIGHT. December 1964.

Mr. GOODMAN. Since December 1964, did you have the occasion to move your business?

Mr. WRIGHT. Yes, I did.

Mr. GOODMAN. When did you move your business?

Mr. WRIGHT. September 17, 1981.

Mr. GOODMAN. At the time that the move took place, were there any other businesses or professional persons sharing the space at Commerce Street with you?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. Who were they?

Mr. WRIGHT. Carl Apple, Larry Apple, and Sherrie McNair in the professional corporation Apple, Apple & McNair.

Mr. GOODMAN. Were they accountants?

Mr. WRIGHT. Yes.

Mr. GOODMAN. And when did they begin to share space at Commerce Street with you?

Mr. WRIGHT. The same time I occupied it.

Mr GOODMAN. From 1964 to 1981?

Mr WRIGHT. Yes.

Mr. GOODMAN. And during that period of time, would you explain how the offices were set up?

Mr. WRIGHT. We had sections on the ground floor. The total building is 10,000 square feet. We occupied the entire ground floor. My section of offices occupied about 1,250 square feet. Carl Apple's was somewhere around 2,000 square feet. His personal office was about 1,300 square feet. Our IBM computer room was about 1,000 square feet. Another accountant in the building at that time, that particular group had about 1,000 square feet. Those were all separate entities.

Mr. GOODMAN. Did you have a common entranceway?

Mr. WRIGHT. A common entranceway, yes

Mr. GOODMAN. Did you have a common lobby?

Mr. WRIGHT. Yes.

Mr. GOODMAN. Did you have common hallway space?

Mr. WRIGHT. Yes.

Mr. GOODMAN. Now, in about 1980, in particular, July 1980, do you recall that a burglary took place at the Commerce Street address?

Mr. WRIGHT. We had more than one break-in at that address. That particular date does not mean anything to me.

Mr. GOODMAN. All right. Are you able to tell the honorable committee how many break-ins you had from, let us say, July 1980 up until October 1983?

Mr. WRIGHT. At that late date, I do not relate to that date. Possibly one or two.

Mr. GOODMAN. Do you recall any particular break-in on July 3, 1980?

Mr. WRIGHT. No, not particularly.

Mr. GOODMAN. That would, of course, be the day before the 4th of July.

Mr. WRIGHT. Yes.

Mr. GOODMAN. All right. Do you recall any break-in on December 24, 1980, the day before Christmas?

Mr. WRIGHT. Not particularly, sir.

Mr. GOODMAN. All right. Do you recall any break-in on January 12, 1981?

Mr. WRIGHT. No, sir.

Mr. GOODMAN. Or August 12, 1981?

Mr. WRIGHT. No, sir.

Mr. GOODMAN. Or October 19, 1983?

Mr. WRIGHT. No, sir.

Mr. GOODMAN. Do you have any independent recollection as you sit here today as to any particular burglary and what took place during any particular burglary?

Mr. WRIGHT. There was very little disturbance to our offices in any of the burglaries.

Mr. GOODMAN. Well, I am asking whether or not you can recall with any particularity any one burglary that you will be able to describe to the committee.

Mr. WRIGHT. I would not be able to relate to the date that burglary occurred. I can tell you something that happened at a burglary.

Mr. GOODMAN. Would you please do that?

Mr. WRIGHT. But I would not know what date that was.

Mr. GOODMAN. All right. Tell us what happened at a burglary.

Mr. WRIGHT. There was some files in some of my rooms. I had about six rooms in my suite. And my receptionist area, the files on her desk were shuffled together.

In one of the other offices, the files were removed from a desk and file cabinet and were on the floor, intact, not maliciously papers thrown about, but they were on the floor, including other personal items that were removed from the desk and they were on the floor. Some items out of the safe, which was in that particular room, there was a floor safe, a movable safe, in that room, and the safe had been broken on that safe, and some of the files were tickled around in the drawer and some of them were on the floor.

Mr. GOODMAN. So what you have just described to the committee is what you can recall in one particular burglary; is that right?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. Do you have any recollection of any other burglaries as to particulars or the specifics of the burglary?

Mr. WRIGHT. There were other break-ins, where you could hardly even know they were there. Stamps were taken, small items, like coins from a desk, and that would be maybe all you could see in that particular suite.

One time there was extensive burnt matches around in almost all of the rooms in my suite, and I think in the other offices also.

That was the most extensive thing that was noticeable at that break-in. You know, there was very little in all the break-ins, was there any extensive damage or malicious destroying or shuffling of papers.

Mr. GOODMAN. Would it be fair to state, then, that you suffered certain break-ins, but after the break-in, no substantial material things were taken as a result of the break-in?

Mr. WRIGHT. That is right.

Excuse me. I had one recorder that was taken once, which was, you know, a small item.

I beg your pardon?

Senator HEFLIN. What was that? I did not understand.

Mr. WRIGHT. I had a recorder that was taken. One of the other tenants that was upstairs, I recall, did have a typewriter that was taken.

Over all this period of time, we had numerous typewriters, adding machines, and they were never destroyed or taken.

Mr. GOODMAN. All right. So in other words, basically the entry took place, and with the exception of a taking of a recorder or a typewriter, nothing of value, to your knowledge, was taken?

Mr. WRIGHT. That is right, sir.

Mr. GOODMAN. But during at least one of the break-ins, papers and files were strewn upon the floor?

Mr. WRIGHT. Yes.

Mr. GOODMAN. And you, of course, do not know what took place during the other break-ins?

Mr. WRIGHT. No.

Mr. GOODMAN. Could you tell us the point of entry of the break-in?

Mr. WRIGHT. Different places at different times. One particular time in my receptionist area, there was a small double window back behind her desk, and a rock had been thrown through that, and the rock actually landed halfway across the room on her desk and, of course, glass was strewn around and blood was all over her desk and papers where he had cut his hand when he came on in. I say "he"; whoever came in.

That was a very small window so he had to be a small person, whoever it was. There was very little room to manipulate through the window. It was at a staircase, and the stair covered half of that small window—had to be a small person.

Mr. GOODMAN. All right. On the other occasions, was there any entry through the front door?

Mr. WRIGHT. I do not recall that.

Mr. GOODMAN. Was there any entry through a wall?

Mr. WRIGHT. No.

Mr. GOODMAN. Was there anything unusual about the entries?

Mr. WRIGHT. Not particularly.

Mr. GOODMAN. All you knew was that after you got there, there had been an uninvited visitor?

Mr. WRIGHT. That is right, sir.

Mr. GOODMAN. And you have no idea who that person was?

Mr. WRIGHT. Never had any inkling. The police always came and messed up your offices more than the burglars did, you know, but——

Mr. GOODMAN. All right. So when you filed a report with the police, they came by and they began to examine the various documents which were on the floor; is that correct?

Mr. WRIGHT. Yes, for fingerprints. Yes, sir.

Mr. GOODMAN. All right. And did you permit them to take those documents to the police station with them?

Mr. WRIGHT. No.

Mr. GOODMAN. You mean they did the fingerprint evaluation there?

Mr. WRIGHT. Yes. Oh, yes.

Mr. GOODMAN. All right. And were you with them at all times?

Mr. WRIGHT. No; I was not.

Mr. GOODMAN. Was there some custodian who was present at all times when the police were there investigating?

Mr. WRIGHT. No, not per se. If that would have been any one person, it would have been myself. I was what you would call the building manager. But as they would move from one office to another, someone else would take over, more or less, in their particular office because they knew what was missing from their files, if anything, and so on and so forth. So I would leave at that point.

Mr. GOODMAN. All right. Would it be fair to state that at least one time when you discovered a burglary in your office there were papers virtually all over the floor?

Mr. WRIGHT. Well, I would not really describe it that way, not as all over the floor.

There were some files in front of the safe, There were some files in front of Mr. Swanson's desk. There were some files in front of the file cabinet. Now, this is three different items, but there were a few files in front of each of those containers. Not mass confusion, no, sir.

Mr. GOODMAN. From where were the files removed?

Mr. WRIGHT. From the file cabinet, from the safe, and from the desk.

Mr. GOODMAN. And you, of course, reported all the entries?

Mr. Wright. Oh, yes.

Mr. Goodman. Were you ever advised as to who the participants in the burglaries were?

Mr. Wright. No, sir. Never heard from them, to my knowledge; after they left, we never heard from them again.

Mr. Goodman. All right. You have been questioned, as you indicated to us yesterday during your examination, by representatives of the Federal Government, have you not?

Mr. Wright. Yes, sir.

Mr. Goodman. And they have asked you as to whether or not any documents were missing or mislaid during the period of time from, let us say, 1980 up until 1983, did they not?

Mr. Wright. Yes.

Mr. Goodman. And did you tell them that any documents were mislaid?

Mr. Wright. No, sir.

Mr. Goodman. Did you ever tell them that you were subjected to multiple burglaries?

Mr. Wright. I do not think we did discuss that, certainly not at length.

Mr. Goodman. How about a little bit?

Mr. Wright. I really do not recall that I discussed that with them, sir. That is not a recollection of mine right now.

Mr. Goodman. Are you able to tell us that you did not discuss it with Mr. Skelton?

Mr. Wright. No; I would not say that, sir.

Mr. Goodman. Are you able to tell us that you did not discuss it with Mr. Gessinger?

Mr. Wright. No, sir.

Mr. Goodman. Are you able, upon recall, in trying to draw back in memory, to tell us whether or not you did discuss it with them?

Mr. Wright. No, sir. I do not have a recollection of discussing that with either of those gentlemen.

Mr. Goodman. All right. It was your opinion that it was not relevant as far as the integrity of the documents in your office?

Mr. Chabraja. Mr. Chairman, may we interpose an objection? I think Mr. Goodman has forgotten that he is calling this witness. He is taking him as if he is on cross, which is not true. It is with his case and he has made him part of it.

Mr. Goodman. With all due respect, Mr. Chairman, I would submit that nobody is anybody's witness. A witness is on and you take them as you find them and you abide by the appropriate rules of evidence. I agree with that. But he is not my witness.

Mr. Chabraja. Certainly he is leading the witness, and he is not entitled to do it when he calls him.

The Chairman. We will overrule the objection, but we will caution you, Mr. Goodman, that you did call Mr. Wright as your witness.

Mr. Goodman. I appreciate that. I would suggest that he is not a friendly witness and that leeway should be given as far as examination is concerned. But I will abide by the Chair's rule.

The Chairman. Well, we are letting you go ahead.

Mr. Goodman. Thank you.

The CHAIRMAN. If you feel that he is an adverse witness, but we will ask you to take due precautions.

Mr. GOODMAN. Yes, sir.

As you sit there, are you able to recall whether or not you discussed this with any representative of the Government?

Mr. WRIGHT. No, sir, I do not recall that.

Mr. GOODMAN. Do you recall during the course of the trials that you were asked questions concerning the misplacement or mislaying of documents?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. And when being asked that, is it your opinion that you answered truthfully?

Mr. WRIGHT. Absolutely, sir.

Mr. GOODMAN. You do not believe that when burglaries take place and articles are strewn on the floor that you do not know whether the document is intact or not, that that may not be an integral document?

Mr. WRIGHT. We never missed anything after a burglary. We never, to my knowledge, ever said, "We have lost something." Never.

Mr. GOODMAN. You did not know every document that was in your file?

Mr. WRIGHT. No, sir, that is absolutely right.

Mr. GOODMAN. And you cannot tell this committee whether or not the April 11, 1980, letter was taken in any of the burglaries which occurred on July 3 and thereafter, through October 19?

Mr. WRIGHT. That is absolutely right.

Mr. GOODMAN. I have no further questions at this point.

The CHAIRMAN. While the House is conferring, on behalf of the Senator from Alabama, Mr. Heflin, let me pose this question:

Do you remember what files were displaced during the breakins?

Mr. WRIGHT. No, sir, not right now. If you would like me to comment about Mr. Claiborne's, they were not in that room. Mr. Claiborne's files, to my knowledge, were never touched.

The CHAIRMAN. You have anticipated Senator Heflin's second question, which is: Was any file in which documents pertaining to Judge Claiborne might have been located displaced?

Mr. WRIGHT. No, sir.

The CHAIRMAN. Does the House wish to cross-examine?

Mr. HUGHES. Yes, sir.

CROSS-EXAMINATION

Mr. HUGHES. Mr. Wright, is it not true that you never really made a connection between the burglaries that took place at your place over a period of years and, in fact, any problems with the Claiborne files?

Mr. WRIGHT. No, sir, I did not.

Mr. HUGHES. Now, is it not a fact that when these burglaries took place, and you have testified there were a number of burglaries over the years at your place, they took place in a number of other businesses in that building?

Mr. WRIGHT. Oh, yes.

Mr. Hughes. So in other words, it was not only your business that was broken into by these burglars, but other businesses in the same building?

Mr. Wright. That is right, sir.

Mr. Hughes. Now, could you determine what they were looking for in some of the instances?

Mr. Wright. Well, the only thing that we could determine that was taken was stamps and cash. They always managed to find the cash and the stamps. I do not care where we had the stamps or the cash; they did find it.

Mr. Hughes. And you recall that that is exactly what they seemed to be looking for because that is what they found?

Mr. Wright. Yes, sir.

Mr. Hughes. Now, you have testified that there were a number of documents strewn around the floor. Do you recall whether or not any of the Claiborne documents were on the floor?

Mr. Wright. No, sir. They were not in that room, sir.

Mr. Hughes. I see. Do you recall examining the documents that were on the floor, the files on the floor, to see if, in fact, any of the documents in there were perhaps missing?

Mr. Wright. No. Whoever was basically in charge—I say whoever, the secretary or the accountant who was in charge of the files would go through those themselves and put them back where they belonged.

So to consciously go through a file myself to look and see what was in the file, I did not do that.

Mr. Hughes. Well, did it appear that anybody had actually gone through the files to look for things?

Mr. Wright. No, sir. Mostly the papers in the files were still in the files. The files themselves were out of the cabinets or the safe or the desk, but they were basically intact. They were on the floor, but they were intact.

Mr. Hughes. And why do you imagine the files were on the floor? Were they in some strategic location that they had been thrown on the floor?

Mr. Wright. No, just out of the cabinet. Wherever they took them out of a cabinet, they just dropped them on the floor, I suppose.

Mr. Hughes. And would you keep things like stamps and other things in these cabinets?

Mr. Wright. No, sir. Mainly they were in a desk. In fact, my secretary's desk. But everybody keeps a little change in their desk, you know, and stamps, too.

Mr. Hughes. But there was never any time when you found that there were documents missing from any of those files that should have been in those files?

Mr. Wright. No, sir. We did not ever consciously miss a document.

Mr. Hughes. I have no further questions.

The **Chairman.** Mr. Goodman.

REDIRECT EXAMINATION

Mr. **Goodman**. You do not have any indexing system of your files, do you?

Mr. **Wright**. Not particularly.

Mr. **Goodman**. You are not able to tell by the push of a computer button what is in a particular file, are you?

Mr. **Wright**. No, sir.

Mr. **Goodman**. And you do not have any idea what files were looked at while those persons were in your office, do you?

Mr. **Wright**. No, sir.

Mr. **Goodman**. They could have gone from office to office looking in every drawer that they chose to look in?

Mr. **Wright**. Absolutely.

Mr. **Goodman**. They could have had a camera with them, and they could have taken pictures of anything in it?

Mr. **Chabraja**. Objection, Mr. Chairman. Mr Goodman has now ventured in the field of speculation. All the verbs in his sentences are "could have."

I think we should limit ourselves to what is probative, not speculation.

Mr. **Goodman**. Mr. Chairman, with all due respect to Mr. Chabraja, I could belabor the situation and ask whether the drawers had locks on them, whether the doors had locks on them. I am trying to shorten the process by asking these general questions. I know how to do it the other way.

The **Chairman**. I have to agree with Mr. Chabraja that it is a speculative line of questioning. I think you have made the point.

Mr. **Goodman**. Were there things of value that a burglar could have taken if he wanted to from your office?

Mr. **Wright**. Absolutely.

Mr. **Goodman**. Could you describe some of those things of value that could have been taken but were not taken?

Mr. **Wright**. Adding machines, typewriters, all types of office equipment. None of those were ever taken from my offices except the recorder. One of the other tenants lost a typewriter upstairs. Those items were just basically never touched.

Mr. **Goodman**. And were there times when there were burglaries that nothing of value was taken, to your knowledge?

Mr. **Wright**. That is right, sir.

Mr. **Goodman**. Thank you.

Mr. **Hughes**. No further questions.

The **Chairman**. Thank you, Mr. Wright.

Mr. **Chabraja**. Mr. Wright is now excused, Mr. Chairman?

Mr. **Goodman**. With all due respect, Mr. Chairman, the reason that he was retained as a witness was pending a review of the Chair of the field material.

The **Chairman**. We will ask Mr. Wright to remain available until further notice, but excuse him here.

[Witness excused.]

The **Chairman**. Mr. Goodman, call your next witness.

Mr. **Goodman**. Annette Quintana.

The Chairman. Ms. Quintana, would you raise your right hand? Do you swear that the testimony that you are about to give in this impeachment proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. QUINTANA. I do.

DIRECT EXAMINATION

Mr. GOODMAN. Ms. Quintana, please state your name and spell your last name for the record.

Ms. QUINTANA. Annette R. Quintana, Q-u-i-n-t-a-n-a.

The CHAIRMAN. Will you keep the microphone as close as possible? You can draw it in closer.

Ms. QUINTANA. Is that better?

The CHAIRMAN. That is much better. Loud and clear.

Mr. GOODMAN. Where do you reside?

Ms. QUINTANA. In Las Vegas, NV.

Mr. GOODMAN. How are you employed?

Ms. QUINTANA. I am an attorney.

Mr. GOODMAN. When did you begin to practice law?

Ms. QUINTANA. I began to practice in—are you talking generally or in Nevada?

Mr. GOODMAN. Generally.

Ms. QUINTANA. In approximately 1949 or 1950.

Mr. GOODMAN. Where were you educated?

Ms. QUINTANA. The University of Colorado, Boulder, CO.

Mr. GOODMAN. Was that for your law degree or for your undergraduate degree or both?

Ms. QUINTANA. My law degree.

Mr. GOODMAN. Where did you go to undergraduate school?

Ms. QUINTANA. University of New Mexico, Albuquerque, NM.

Mr. GOODMAN. Did you practice anyplace before you went to practice law in Las Vegas, NV?

Ms. QUINTANA. Yes. I practiced in Santa Fe, NM, and I also practiced in Los Alamos, NM.

Mr. GOODMAN. What type of law did you practice while you were an attorney in New Mexico?

Ms. QUINTANA. Some of it was criminal, and I had also worked with a legislative committee revising a criminal code, which took up a substantial number of years.

Mr. GOODMAN. When did you move to Nevada to practice law?

Ms. QUINTANA. In approximately 1964.

Mr. GOODMAN. How were you first employed in Nevada?

Ms. QUINTANA. I was employed very temporarily as a Kelly Girl, and then I decided to remain there and look for professional work.

Mr. GOODMAN. Did you take the Nevada bar?

Ms. QUINTANA. Yes, I did, in late 1964.

Mr. GOODMAN. Did you pass the Nevada bar?

Ms. QUINTANA. Yes.

Mr. GOODMAN. Did you then go to work as an attorney?

Ms. QUINTANA. I was already working for Judge Claiborne. I began to work with him almost a year before I was admitted to the bar in Nevada. At that time, the bar examinations were only given once a year.

Mr. GOODMAN. What type of work were you doing for Judge Claiborne after you became licensed as an attorney in Nevada?

Ms. QUINTANA. Principally, it was legal research and drafting. I worked on appeals. I worked in the preparation of pretrial motions. Those kind of things that a person would do in the office. He needed almost no assistance in the courtroom.

Mr. GOODMAN. While working for him, of course, you were working in the capacity as an attorney for an attorney because Judge Claiborne was practicing law at that time; is that correct?

Ms. QUINTANA. That is correct.

Mr. GOODMAN. All right. Now, so the record is clear, how are you employed today?

Ms. QUINTANA. I am your associate in the law firm Goodman, Terry, Stein & Quintana.

Mr. GOODMAN. And when did you associate yourself with me?

Ms. QUINTANA. In September 1978 when Judge Claiborne went on the bench.

Mr. GOODMAN. Now, Ms. Quintana, in 1978, 1979, did you have a tax preparer?

Ms. QUINTANA. Yes, I did.

Mr. GOODMAN. Who was your tax preparer?

Ms. QUINTANA. Joseph Wright.

Mr. GOODMAN. Did Mr. Wright have employees with whom you had dealings concerning your tax returns?

Ms. QUINTANA. I later learned that someone else had worked on my tax preparation. At the time that this happened, I was not aware of it.

Mr. GOODMAN. All right. Who did you learn worked on your tax return?

Ms. QUINTANA. The man's name is Ken Swanson.

Mr. GOODMAN. Was he an employee of Mr. Wright?

Ms. QUINTANA. I do not know. He did tell me personally, after he identified himself, that he had worked on my tax return in 1978.

Mr. GOODMAN. Did there come a time that you reported to your accountant that you had forwarded certain moneys to Judge Claiborne in the year of 1979?

Ms. QUINTANA. Yes.

Mr. GOODMAN. What did you tell your accountant?

Ms. QUINTANA. Well, I displayed to him——

Mr. CHABRAJA. Objection, Mr. Chairman. May we have the identity of the accountant and the time and place this conversation took place to lay a proper foundation?

The CHAIRMAN. Certainly.

Mr. GOODMAN. Did you have a conversation with an accountant about paying certain moneys to Judge Claiborne in 1979?

Ms. QUINTANA. I did.

Mr. GOODMAN. Where did the conversation take place?

Ms. QUINTANA. In Joseph Wright's office.

Mr. GOODMAN. With whom was the conversation?

Ms. QUINTANA. With Joseph Wright.

Mr. GOODMAN. Who else was present?

Ms. QUINTANA. No one else was present.

Mr. GOODMAN. What did you say to Mr. Wright?

Ms. QUINTANA. I explained to Mr. Wright that I had received a legal fee which was partially mine and partially Judge Claiborne's, and I gave him documents showing the way in which I had divided the fee, which had been in the form of a check or series of checks to me.

Shall I continue?

Mr. **Goodman**. What kind of documents did you give him?

Ms. **Quintana**. At that time I did not have a personal professional accountant, and this was the only item in this category. It did not seem advisable to me to establish a bank account just to handle this series of checks.

So when the checks were payable, I would cash them at the bank and have drawn double cashier's check. Each check was for $2,000. So I would have one cashier's check issued to me for $1,000 and one to Judge Claiborne for $1,000.

Mr. **Goodman**. You advised Mr. Wright of that fact?

Ms. **Quintana**. Oh, yes.

Mr. **Goodman**. Did you have a discussion with Mr. Wright as to why you were giving these fees, in effect, to Judge Claiborne?

Ms. **Quintana**. That is right. The object of keeping a record, of course, was for tax purposes, and he was appreciative of that.

Mr. **Goodman**. When was the discussion with Mr. Wright?

Ms. **Quintana**. It was probably in March.

Mr. **Goodman**. Of what year?

Ms. **Quintana**. Of 1980.

Mr. **Goodman**. In March 1980?

Ms. **Quintana**. Yes.

Mr. **Goodman**. At his office?

Ms. **Quintana**. For the 1979 year.

Mr. **Goodman**. All right. Did you have any discussion with any of Mr. Wright's employees about the cross-checking of Judge Claiborne's tax return with your tax return as to these items of income?

Mr. **Chabraja**. Objection. Mr. Chairman, if I may, the subject matter of this specific inquiry was testified to before Judge Hoffman outside the presence of the jury. A proffer of this testimony was made. Ms. Quintana testified at length. Judge Hoffman excluded the evidence at page 1050 of the transcript of the second trial on relevance grounds. We submit the same objection.

Mr. **Goodman**. If I may respond, Mr. Chairman, I do not think we would be here today if Judge Hoffman made the rulings that we asked him to make. This is an independent trial by the Senate under your authority, and we submit that the rulings have to be made independently of the erroneous rulings of the trial judge. It has nothing to do with these proceedings.

Mr. **Chabraja**. I might add that no error was assigned with respect to that ruling and no question raised with respect to it on appeal.

The **Chairman**. Well, I understand the nature of the House objection, but I believe for the purpose of this proceeding we will overrule the objection and allow you to bring this evidence in.

Mr. **Goodman**. Thank you, Mr. Chairman.

When did you have such a discussion?

Ms. **Quintana**. I never had such a discussion with Joseph Wright. I did have such a discussion with someone else.

Mr. **Goodman**. With whom?

Ms. **Quintana**. Ken Swanson.

Mr. GOODMAN. Who is Mr. Ken Swanson?

Ms. QUINTANA. He is a person who identified himself to me on the telephone within the last month and stated to me that he had prepared my 1978 personal income tax return, and he did engage me in a discussion about cross-checking.

Mr. GOODMAN. Did he indicate that it was a policy in Mr. Wright's office to cross-check?

Ms. QUINTANA. He did not say that. When he commented that he had cross-checked my return with Judge Claiborne's for 1978, I said, well, that is just good practice, is it not? He said yes.

Mr. GOODMAN. Did he indicate that he did the same for 1979?

Ms. QUINTANA. He did not mention 1979, only 1978.

Mr. GOODMAN. Were there, in fact, checks sent to Judge Claiborne in 1978 by yourself?

Ms. QUINTANA. Only in 1979.

Mr. GOODMAN. All right. But he indicated there was a cross-checking of the tax returns?

Ms. QUINTANA. Yes.

Mr. GOODMAN. And that was his policy?

Ms. QUINTANA. He did not say that. He just said it was good policy and that he had done it.

Mr GOODMAN. Thank you Nothing further.

The CHAIRMAN. Mr. Chabraja.

CROSS-EXAMINATION

Mr. CHABRAJA. Ms. Quintana, just so I am sure I understand, this conversation that you have just related to Members of the Senate took place with one Ken Swanson?

Ms. QUINTANA. Yes.

Mr. CHABRAJA. Not with Joseph Wright himself?

Ms. QUINTANA. I have described a conversation with Joseph Wright. I have also described one with Ken Swanson.

Mr. CHABRAJA. OK. And as I understand you, during the course of your income tax preparation for the year 1979, in approximately March 1980, you had a conversation with Mr. Wright where you told him about the Sarno fee?

Ms. QUINTANA. Correct.

Mr. CHABRAJA. OK. And you told him how you split that $10,000 fee, $5,000 retained by you and $5,000 for Judge Claiborne; is that correct?

Ms. QUINTANA. That is correct.

Mr. CHABRAJA. OK. And the subject of cross-checking of the return was not something you discussed with Mr. Wright; is that true?

Ms. QUINTANA. That is true.

Mr. CHABRAJA. All right. And you later had a conversation with Mr. Swanson about that; is that right?

Ms. QUINTANA. Yes.

Mr. CHABRAJA. And in what connection did you have that conversation with Mr. Swanson?

Ms. QUINTANA. It related to these proceedings. He had learned indirectly that he was expected to testify here, and he called me for information because he had not been at his office when a special letter had been delivered there.

So while I related to him the contents of the letter that I had received about appearing here, he volunteered this information to me about my 1978 return, with other information.

Mr. CHABRAJA. So this was a recent conversation?

Ms. QUINTANA. Yes, it was.

Mr. CHABRAJA. This was not a conversation that you had with Mr. Swanson during the course of his representation of you or his work on your return?

Ms. QUINTANA. No. As I explained, I was not aware that he had worked on my return.

Mr. CHABRAJA. Let us be perfectly precise about this. This is something that occurred within the last 30 days?

Ms. QUINTANA. Yes.

Mr. CHABRAJA. Maybe within the last week?

Ms. QUINTANA. I think it was probably September 9, 1986.

Mr. CHABRAJA. OK. Just a few days ago.

Ms. QUINTANA. That is right.

Mr. CHABRAJA. Is it not a matter of fact, Ms. Quintana, that you and Judge Claiborne, in the year that he closed out his practice, had transactions other than the exchange of legal fees income?

Ms. QUINTANA. We did have one.

Mr. CHABRAJA. Yes, and what was that?

Ms. QUINTANA. This was in 1978, and at the time the office was closed, I was due a vacation but it was not an appropriate time to take one. And in lieu of a vacation, we agreed that I would take a small amount of office equipment with me.

Do you want me to describe what was taken?

Mr. CHABRAJA. Briefly, sure.

Ms. QUINTANA. I took an IBM typewriter, a lamp, a wooden secretary chair, and one legal size filing cabinet, and to preserve the proprieties, a bill of sale was executed by Judge Claiborne for those items.

There was only one matter which carried over on the basis of a division of fees, and that was the matter of Mr. Jay Sarno.

Mr. CHABRAJA. OK. Just limiting ourselves for a moment to this exchange of physical assets, as I understand your testimony, you accepted some office practice equipment in exchange for wages, in effect; is that true?

Ms. QUINTANA. Yes. It was actually vacation, but it was credited for that.

Mr. CHABRAJA. And you worked out a bill of sale, and you gave that information to Mr Wright or Mr Swanson?

Ms. QUINTANA. I gave it to Mr. Wright.

Mr. CHABRAJA. All right. And the issue for tax purposes, I take it, was your basis in this new equipment that you had just acquired?

Ms. QUINTANA. That is right.

Mr. CHABRAJA. OK. And did he make mention of the fact to you that he would have to check Judge Claiborne's return for the same year to make sure that you had parallel entries on basis?

Ms. QUINTANA. Mr. Wright did, yes.

Mr. CHABRAJA. He did, right?

Ms. QUINTANA. That is right.

Mr. CHABRAJA. And you have testified about that before. That is true?

Ms. QUINTANA. I do not believe I was ever asked that specific question before, but he did comment that the item would be a credit to me for income purposes and a debit to Judge Claiborne so that they would be balanced.

Mr. CHABRAJA. OK. I have no further questions.

The CHAIRMAN. Anything further, Mr Goodman?

Mr. GOODMAN. No, Mr. Chairman. As far as I am concerned, Ms. Quintana can be excused and go back to work.

The CHAIRMAN. Mr. Chabraja, do you have any further anticipation that we need Ms Quintana?

Mr. CHABRAJA. I do not think so, Mr. Chairman.

The CHAIRMAN. Thank you very much for coming.

Ms. QUINTANA. Thank you.

The CHAIRMAN. You are excused.

[Witness excused.]

The CHAIRMAN. Call your next witness, Mr. Goodman.

Mr. GOODMAN. Mr. Chairman, Ken Swanson.

The CHAIRMAN. Mr. Swanson, will you raise your right hand? Do you swear that the evidence you will now give in the impeachment proceeding now pending will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. SWANSON. I do.

DIRECT EXAMINATION

Mr. GOODMAN. Mr. Swanson, please state your name and spell your last name for the record.

Mr. SWANSON. My name is Kenneth Swanson, S-w-a-n-s-o-n.

Mr. GOODMAN. Mr. Swanson, where do you reside?

Mr. SWANSON. Las Vegas, NV.

Mr. GOODMAN. How long have you lived there?

Mr. SWANSON. Since November of 1978.

Mr. GOODMAN. Were you ever employed by Joseph Wright?

Mr. SWANSON. Yes, I was.

Mr. GOODMAN. When did you begin your employment with Mr. Wright?

Mr. SWANSON. In November 1978.

Mr. GOODMAN. And are you still employed by Joseph Wright?

Mr. SWANSON. No; I am not.

Mr. GOODMAN. When did you leave that employment?

Mr. SWANSON. In 1982, I believe, October 1, 1982; although I have done some minor work for Joseph Wright recently. But I have not been a regular employee of his since 1982.

Mr. GOODMAN. While you were in his regular employ, what type of work did you do?

Mr. SWANSON. I was an accountant.

Mr. GOODMAN. And what were your duties and responsibilities in his office?

Mr. SWANSON. Varied and sundry. I prepared financial statements for certain clients, prepared tax returns for certain other clients, gave certain clients tax advice or accounting advice or general duties of an accountant.

Mr. GOODMAN. At the time you were employed with Mr. Wright, were you always employed at the same location?

Mr. SWANSON. No. When I say I left Mr. Wright's employ in 1982, actually there had been a merger of two firms some time during August of 1981. So when I say that it was Joseph Wright of a successor firm, Apple, Wright, McNair and Apple. And we moved.

Mr. GOODMAN. So in other words, when you first went to work for Mr. Wright, you were working for him as his being a sole practitioner; is that correct?

Mr. SWANSON. That is correct.

Mr. GOODMAN. And some time while you were in his employ, there became a merger with a separate and distinct firm which shared the same office space; is that right?

Mr. SWANSON. That is correct.

Mr. GOODMAN. And that other firm was known as Apple——

Mr. SWANSON. Apple, Apple, and McNair, and the new firm was known as Apple, Wright, McNair, and Apple.

Mr. GOODMAN. All right. And when the firms merged, were you at the same premises?

Mr. SWANSON. For a period of approximately 1 month, and then the merged firm moved from 1209 South Commerce Street, Las Vegas, NV, to 333 Rancho Road, Las Vegas, NV.

Mr. GOODMAN. When the firms merged, how many employees were employed by the merger?

Mr. SWANSON. Approximately 15.

Mr. GOODMAN. Fifteen employees. And when the move took place, 1 month after the merger how many of those employees participated in the moving of the various items from one location to another?

Mr. SWANSON. My belief is that every employee, except for myself, did.

Mr. GOODMAN. All right. And that move was a move across town, was it not?

Mr. SWANSON. It was a move of maybe 2 or 3 miles.

Mr. GOODMAN. All right. And did the move take place in a moving van or in individual cars, to your knowledge?

Mr. SWANSON. I really don't know. I wasn't there that day. It primarily took place on a Saturday. Probably to some extent both.

Mr. CHABRAJA. Objection, Mr. Chairman, and move to strike everything from "probably" forward. He testified fully that he did not know.

Mr. GOODMAN. I have no objection to that being stricken, from that point forward.

The CHAIRMAN. It will be stricken.

Mr. GOODMAN. Mr. Swanson, did the 15 employees of the merged firms have access to each other's office space?

Mr. SWANSON. Yes.

Mr. GOODMAN. Did they have access to each other's files?

Mr. SWANSON. Yes.

Mr. GOODMAN. Did they each have a key to the office?

Mr. SWANSON. Yes.

Mr. GOODMAN. Were the office hours constant from 9 to 5, or did they vary?

Mr. SWANSON. I'm not sure I follow your question.

Mr. GOODMAN. All right. Was the office ever opened up by any of the employees before 9 o'clock?

Mr. SWANSON. Yes.

Mr. GOODMAN. Was the office continued, to remain open any time after 5 o'clock?

Mr. SWANSON. Yes.

Mr. GOODMAN. Was the office open, on occasion, 7 days a week?

Mr. SWANSON. Yes.

Mr. GOODMAN. Did there come an occasion that you learned that there was a break-in of the office at Commerce Street?

Mr. SWANSON. Yes.

Mr. GOODMAN. Was the break-in before, or after the merger took place?

Mr. SWANSON. Before.

Mr. GOODMAN. Did you see what the office looked like after the break-in?

Mr. SWANSON. Yes. I did.

Mr. GOODMAN. Can you tell us with any type of specificity when the break-in took place.

Mr. SWANSON. There were several break-ins. The only one that I can specifically remember the date on was the one that was December 24, 1980, and I remember it because it was the day before Christmas. I do recall that one or more of the other break-ins were on a holiday weekend. What holiday weekend I'm not sure.

Mr. GOODMAN. Could it have been the preceding July the 4th weekend——

Mr. CHABRAJA. Objection, Mr. Chairman. This witness is on direct examination and once again he is leading him, and trying to cause him to speculate.

The Chairman. Could you rephrase your question.

Mr. GOODMAN. Yes. Do you know what other holiday weekend the burglary took place?

Mr. SWANSON. No. I do not.

Mr. GOODMAN. All right. Can you describe the discovery of the burglary on December 24, 1980.

Mr. SWANSON. Yes. We entered the building, and said, "Oh, no, not again."

Mr. GOODMAN. Was anybody with you?

Mr. SWANSON. When I entered the building I was alone. There were others already in the building when I arrived who were shedding tears or whatever over the mess that we once again had, and just the day before Christmas made it more difficult than most of them.

Mr. GOODMAN. Could you describe what you saw or found on December 24, 1980, at Mr. Wright's office on Commerce Street.

Mr. SWANSON. Yes; and it will give me an opportunity to readdress a question that I've already answered, because you asked earlier if we had—if all of these employees had access to the various files, and I answered that question, "Yes," meaning that yes, after the merger, and after we moved into 333 Rancho Road, that all employees had cross-access to files.

Prior to that point they did not, and I didn't realize, when you asked the question, that you meant prior to that point. Prior to that point there were separate suites of offices within 1209 South Commerce. There was a central entryway area, and right as you came in the front door, you went into an area of offices that belonged to Apple, Apple, and McNair, and then, off to the right were the offices that belonged to Joseph C. Wright.

There were two other areas of offices. One belonged to Apple, Apple, and McNair, and the fourth and final section had been Clifford Rupes who had deceased and the offices were vacant.

The office suite of Joseph Wright was, had a locked door from the central entryway. One of the things that occurred in the break-in on December 24, 1980, was that they had come in through his section of the building, and to get into the remainder of the building had not only broken through the doorway but actually had broken the wall. And the door was actually broken in half, if you will. You had to step up over a part of the door that was still there.

They had literally smashed their way through this door. Because what had gone on, as each of the break-ins had occurred over a period of time, we kept attempting to reinforce the security between sections of the building with stronger and stronger locks, and stronger and stronger doorways, so that if we were going to continue to have these burglaries, at least hopefully, we could keep them to one section of the building. But it was to no avail. They went through the doors, and, if necessary, through the wall to——

Mr. GOODMAN. When you got to the office on December 24, 1980, could you tell the committee the state of the files, if any.

Mr. SWANSON. There were files strewn on the floors. They had obviously been through some or all of the file cabinets in both sections of the building, Apple's section and our section of the building.

Mr. GOODMAN. And the files were actually on the floor?

Mr. SWANSON. Some of them, yes.

Mr. GOODMAN. Were papers from the files on the floor?

Mr. SWANSON. Yes.

Mr. GOODMAN. And who participated in trying to reassemble the files after the burglary was discovered?

Mr. SWANSON. Well, I believe that everyone in their section participated in reassembling the files. For instance, within Joseph Wright's office, and my individual office, there were file cabinets which basically were the files that I worked on on a regular basis, and in the office next to mine which belonged to a woman by the name of Ellen Arthur. There were file cabinets that basically belonged to clients that she worked on on a regular basis.

Behind Connie Wright's desk there were more general files that maybe anyone might work on. So, generally, anyone put together the files that were in their particular area. I mean, if there were files out and around on the floor, that had been dumped from their particular area, they would have assembled them and put them back where they belonged.

Mr. GOODMAN. There was no way of ascertaining whether a particular document was missing, was there?

Mr. SWANSON. I have no way of ascertaining that.

Mr. GOODMAN. There was not any type of indexing system, was there?

Mr. SWANSON. No; there was not.

Mr. GOODMAN. All right. Now I would like to go to another area with you, Mr. Swanson. Do you know Judy Ahlstrom?

Mr. SWANSON. No; I do not.

Mr. GOODMAN. Do you know whether or not Judy Ahlstrom was ever on the premises of Joseph Wright's office?

Mr. CHABRAJA. Objection, Mr. Chairman. The witness has testified that he's incompetent to answer that question. He says he does not know her. The necessary predicate for the next question is missing.

Mr. GOODMAN. Fine. I will get it from Judy Ahlstrom.

Do you know, Mr. Swanson, whether or not Mr. Wright had a policy of permitting his clients to sign tax returns in blank?

Mr. SWANSON. I know that at one time he had that policy, and that at some point of time he changed that policy.

Mr. GOODMAN. All right. But he did engage in the policy where certain of his clients could sign the returns, is that right?

Mr. CHABRAJA. Objection, Mr. Chairman. This calls for incompetent hearsay. Unless this witness can testify and lay a proper foundation that he participated in the receipt of blank tax returns signed by clients during his tenure with Mr. Wright. If he cannot, it is blatant hearsay.

The CHAIRMAN. Mr. Chabraja, you, of course, will have an opportunity to cross examine on this point, but I think you can lay a better foundation, Mr. Goodman.

Mr. GOODMAN. Do you have personal knowledge as to whether or not Joseph Wright ever permitted any of his clientele to sign the returns in blank?

Mr. SWANSON. I had discussions with Joseph Wright in which he told me he did.

Mr. GOODMAN. Thank you. Do you know of any time that Joseph Wright ever engaged in the shredding of files?

Mr. SWANSON. I do not.

Mr. GOODMAN. Thank you.

The CHAIRMAN. Mr. Chabraja.

Mr. GOODMAN. Excuse me. May I have the Chair's indulgence, please.

The CHAIRMAN. Yes.

Mr. GOODMAN. Mr. Swanson, do you know, of your own personal knowledge, whether Judge Claiborne's secretary ever visited Joseph Wright's office?

Mr. SWANSON. There was a day—and I cannot identify precisely what day it was—that a woman came into the office who was identified to me—and I can't specifically say who identified her to me as being Judge Claiborne's secretary.

Mr. GOODMAN. All right. Do you know what that woman did, if anything?

Mr. SWANSON. She delivered something to the office.

Mr. GOODMAN. Are you able to pinpoint it as far as point in time?

Mr. SWANSON. Not precisely, no.

Mr. GOODMAN. Generally?

Mr. SWANSON. It would have been some time when a tax return was due, or very near to being due in either 1979 or 1980, and the tax return for 1978 or 1979. I'm not sure which.

Mr. GOODMAN. All right. Thank you.

The CHAIRMAN. While Mr. Chabraja is coming forward, let me ask on behalf of the Senator from Tennessee, Mr. Gore: did you believe the break-ins were related to break-ins in other offices in the same building?

Mr. SWANSON. I'm not sure that I fully understand that question. There was—if they broke into our office, they broke in throughout——

The CHAIRMAN. Were there other break-ins in the building?

Mr. SWANSON. Any time that they broke into any office in the building, they broke into all offices in the building.

The CHAIRMAN. Did you believe the break-ins were related to the matter involving Judge Claiborne?

Mr. SWANSON. Obviously at the time I did not because I didn't know that there was a matter involving Judge Claiborne. Since that point of time that thought has certainly come to my mind, which is why I thought yesterday that it might be important enough to bring to the attention of Mr. Goodman because it—I mean, there has been quite a bit of conversation about burglaries and break-ins, and whatever, having to do with Judge Claiborne, that has been in the newspapers, and that I have read, and as I read that, it occurred to me that, gee, this is the period of time that we had all of these break-ins, that they never seemed to want to steal anything. They just seemed to be looking for something, and it——

The CHAIRMAN. But you say when there was a break-in in the building, all the offices in the building were broken into?

Mr. SWANSON. That's correct.

The CHAIRMAN. All right. Thank you.

CROSS EXAMINATION

Mr. CHABRAJA. Mr. Swanson, how long have you known Oscar Goodman?

Mr. SWANSON. I met him for the first time, probably a year ago, or some time after the judge had been convicted, was the very first time I ever met Oscar Goodman, and I can't tell you precisely what that date was, although I have submitted an affidavit for some court proceeding that would be within a day or two. If you look up the date on that affidavit of when I first met Mr. Goodman.

Mr. CHABRAJA. That affidavit is of interest to me, Mr. Swanson.

Mr. GOODMAN. Objection. That is not a question.

Mr. CHABRAJA. It is a preface to a question.

Mr. GOODMAN. Mr. Chairman, we respectfully request that the remarks be addressed to the Chair and not become personal.

Mr. CHABRAJA. Mr. Chairman, I am about to address a remark to the Chair. I would like production of the affidavit that Mr. Swanson alludes to, and I propose to examine him slightly more about it.

But it seems to me, from information I have, that Mr. Goodman has filed an affidavit in another proceeding with respect to this witness on this same subject matter, and I do not have it.

The CHAIRMAN. Could you identify the proceeding in which the affidavit was——

Mr. CHABRAJA. Yes; this is in connection with Judge Claiborne's motion for a new trial, and the only hint of it that I received was in colloquy between Mr. Goodman and the court found at page 7 and 8 of a transcript of that proceeding, where Mr. Goodman sought to introduce for purposes of the motion an affidavit prepared by Ken Swanson.

I would like to ask Mr. Swanson some questions about that scenario while the Chair may be considering my request, and maybe Mr. Goodman servicing it.

The CHAIRMAN. We will see if that affidavit is in fact among the records that have been forwarded to us. Why do you not proceed with other questions.

Mr. CHABRAJA. Mr. Swanson——

Mr. SWANSON. If the question deals with the affidavit, I have a copy of it.

Mr. CHABRAJA. Do you?

Mr. SWANSON. Yes I do.

Mr. CHABRAJA. Good.

Mr. SWANSON. It's in the back of the room but I can go get it.

Mr. CHABRAJA. Well, maybe we can get it in a moment. Did that affidavit have to do with the very same subject matter you have testified——

Mr. SWANSON. Which subject matter?

Mr. CHABRAJA. Well, let us take——

Mr. SWANSON. If it has to do with the subject matter of——

Mr. CHABRAJA. Let us take them——

Mr. SWANSON [continuing]. Whether Judge Claiborne's secretary came into the office——

Mr. CHABRAJA. OK. This woman that you have identified, not by name, but by general description?

Mr. SWANSON. That's correct.

Mr. CHABRAJA. Who was it that identified the woman for you?

Mr. SWANSON. I'm not positive. It was either Connie Wright or Joseph Wright.

Mr. CHABRAJA. Somebody, you do not remember, identified this woman as a secretary to Judge Claiborne?

Mr. SWANSON. That's correct.

Mr. CHABRAJA. And you cannot remember the year?

Mr. SWANSON. No; I cannot.

Mr. CHABRAJA. And all you remember is that it was around tax time?

Mr. SWANSON. Yes.

Mr. CHABRAJA. All right. Let's move to the subject of signing blank tax returns.

Mr. Swanson, do you recall when you had the conversation with Judge Claiborne—I mean with—excuse me, I apologize. Let me restate the question.

Do you remember when you had a conversation with Jay Wright on the subject of permitting clients to sign blank tax returns?

Mr. SWANSON. Yes. That would have been either October 14 or 15, 1979 or 1980.

Mr. CHABRAJA. What brings to mind so precisely that date?

Mr. **Swanson**. Because it had to do with a blank tax return for a client whose tax return I had some involvement in preparing, and the client was either going to bring in or send in a signed blank form, and I had a discussion with Mr. Wright that I said I don't think we should use a blank signed form, and a discussion with him, why we should not do that, and he agreed with me, and agreed that we would not do that, and that he would—that that had been his policy, but yes; he now agreed with me that that probably was not the best of policies.

Mr. **Chabraja**. In your tenure with Mr. Wright he never accepted a signed blank return, did he?

Mr. **Swanson**. On no return I ever worked on, he certainly didn't.

Mr. **Chabraja**. And to the extent that you had a conversation with Mr. Wright it had to do with his policy for some period preceding your involvement with him, is that not true?

Mr. **Swanson**. Well, no; it had to do with right then at that moment and I believe it was the judge's return but I can't swear to that absolutely, but I think that was the question, that we're going to have Harry sign this return in blank, and I said no, we can't do that.

Mr. **Chabraja**. And you did not do it?

Mr. **Swanson**. Oh, we certainly didn't, to my knowledge.

Mr. **Chabraja**. OK. Thank you.

Mr. Chairman, may I have a copy of the affidavit and examine it and determine whether I have anything further with respect to Mr. Swanson?

The **Chairman**. The staff reports that we do not seem to have a copy of that affidavit. Since Mr. Swanson has it, we will ask him to go and get it from his chair.

[Pause.]

Mr. **Goodman**. Mr. Chairman, may I examine the document before Mr. Chabraja poses his questions?

The **Chairman**. Certainly. After Mr. Chabraja has had an opportunity to read it.

[Pause.]

Mr. **Chabraja**. I have no further questions of this——

Mr. **Goodman**. I would like to see it, Mr. Chairman.

[Pause.]

Mr. **Goodman**. Your Honor—not Your Honor. Mr. Chairman, pardon me for saying that. It is just being used——

The **Chairman**. It is all right.

Mr. **Goodman**. I am sorry.

I would like to have this marked for identification, and I will tender it as a prior consistent statement of the witness.

Mr. **Swanson**. Do I get a copy of that back?

Mr. **Chabraja**. Your Honor, that is improper. I made no effort to impeach this witness with that statement. It is consistent with his testimony here, and it is not appropriate to attempt to buttress testimony unless somebody has made an attempt to impeach it.

Mr. **Goodman**. Mr. Chairman, it was my distinct impression that through the managers 'counsel, there was an effort to impeach the witness as far as the issue as to whether or not he was advised that the judge's secretary was on the premises, and I would submit that if we are going to follow the rules of evidence, the Federal rules of evidence, that is an attack on the witness testimony on the basis of recent fabrication, and a prior consistent statement is the way to counteract that. And on that basis, I so offer the document.

The CHAIRMAN. We will accept it.

Mr. GOODMAN. Thank you.

[Whereupon, Claiborne exhibit No. 21 was marked and received in evidence.]

The CHAIRMAN. I have a question on behalf of the Senator from Alabama, Mr. Heflin: Did you ever discuss Judge Claiborne's 1979 tax returns with Mr. Wright?

Mr. SWANSON. I have no specific recollection of discussing his 1979 tax return with Mr. Wright. I'm not saying that I didn't. I just don't have any specific recollection.

The CHAIRMAN. So you would not recall what was discussed because you do not remember a discussion?

Mr. SWANSON. That's correct.

The CHAIRMAN. Or whether the question of legal fees came up?

Mr. SWANSON. No, I don't—I don't recall that I was even involved in the preparation of the judge's 1979 return. I know I was involved in the preparation of his 1978 return, but I don't believe I was involved in the preparation of his 1979 return. I believe I was involved in the preparation of a request for extension on his 1979 return, on April 15, but not the preparation that took place some time thereafter.

I'm not positive that I wasn't, but I don't think I was involved in that.

The CHAIRMAN. Do you recall discussing with Mr. Wright conversations with agents of either the IRS or the FBI?

Mr. SWANSON. I believe I had a conversation with him the day that the guilty verdict came down. I related to Mr. Wright, at that time, that I had read in the paper where he had testified that the judge's secretary had never delivered anything to the office, and that he was in error in that testimony because I specifically remembered differently.

And I believe I went on to explain to him that the two gentlemen from the Government—and I don't know who they are. I mean, one identified himself as being an FBI agent, and the other identified himself as being an Internal Revenue agent. I do not recall their names, and if they stood in front of me, I wouldn't be able to tell you if it was them. Interviewed me some time after I was no longer employed by Joseph Wright and I believe prior to the trial. And the question I believe came up at that time—there was questions that they brought up about this document that—and that may or may not exist, or, certainly a copy of it now exists, I guess, from what I have heard. That I've seen a copy of it now, but had not at that time, and they asked me about that document. And I mean, I went into this conversation with them, and I believe that on the day that the judge was found guilty, I had that conversation with Mr. Wright.

I certainly am positive about the beginning part of the conversation.

The CHAIRMAN. Senator Heflin asks further, if the letter of April 11, 1980—are you familiar with that letter? That is the missing letter.

Mr. SWANSON. I have been shown a copy of that letter by either the judge or Mr. Goodman, sometime, approximately sometime in September of 1984, and asked by—whether it was the judge, or Mr. Goodman—if I had ever seen that letter before, and at that time my answer was no, I had not--no recollection of having—I couldn't say that I hadn't seen it. I had no recollection of having ever seen it before, and——

The CHAIRMAN. That was the first time you had ever seen——

Mr. SWANSON [continuing]. Obviously, I can't recollect it now.

The CHAIRMAN. All right. That was the first time you had ever seen it?

Mr. SWANSON. That's the first time I recollect ever having seen it.

The CHAIRMAN. Right.

Mr. SWANSON. I mean, if I had seen it prior to that, it would not have had any significance to me, and would not be something that I would remember having seen.

The CHAIRMAN. Mr. Swanson, I am going to ask counsel to bring you the extension, the form for applying for extension. Mr. Chabraja, it is one of your exhibits. Can you help us with the exhibit number.

Mr. DEBRUIN. Mr. Chairman, it is exhibit 20, I believe.

The CHAIRMAN. No. 20. I will ask counsel to show you exhibit No. 20 which is an application for extension of time, and see if you have ever seen that before.

[Pause.]

Mr. SWANSON. I do not know whether I have ever seen this document or not. It's a typewritten document, and, I mean, in my lifetime I've seen thousands of requests for extension, and am certainly not going to remember my own, for this year, if you put it in front of me, other than the fact that I signed it myself and would recognize my signature.

The CHAIRMAN. At the top of the page, on the righthand side, there is a figure, 265 with a circle around it.

Mr. SWANSON. All, all that means is it was copied. It's a photocopy out of package X supplied by the Internal Revenue Service.

The CHAIRMAN. That has no further——

Mr. SWANSON. It was page 265 in package X, and it's a standard booklet, forms booklet that is sent to accountants by the Internal Revenue Service.

The CHAIRMAN. Right.

Mr. SWANSON. Rather than asking them for 1,000 forms, you just copy——

The CHAIRMAN. I am requested by Senator Pressler to put this question to you: Did you have a dispute with Mr. Wright? Why did you leave his employ?

Mr. SWANSON. No, I have never had a dispute with Mr. Wright. I happen to consider Mr. Wright to be my best friend in the whole world, have for, since shortly after I'd known him, and still do today. I have no disagreement with Mr. Wright whatsoever.

I assisted Mr. Wright in some tax work that he was working on within the past 2 months.

The CHAIRMAN. And his further question is: Why did you leave his employ?

Mr. SWANSON. Because I had an opportunity elsewhere that was substantially more income for me, and I accepted it. I had had the same opportunity a year prior, and had declined it, because I felt so strongly toward Mr. Wright, and so I left with great regret.

The CHAIRMAN. The Senator from Arkansas, Mr. Pryor, asks you this question: On top of the righthand corner of exhibit No. 36, there is a notation. Do you recognize the handwriting of that notation?

Mr. SWANSON. No. I do not.

The CHAIRMAN. Thanks very much.

Mr. GOODMAN. Excuse me, Mr. Chairman.

I do have a question to ask the witness based on the line of questions which already have been asked by the committee.

The CHAIRMAN. We will recognize you in just a minute, Mr. Goodman.

Mr. GOODMAN. Certainly.

The CHAIRMAN. Senator Heflin says when you saw the lady identified as Judge Claiborne's secretary at the office, do you recall whether she talked to Mrs. Wright?

Mr. SWANSON. No. I do not. The way the office was laid out, when you came into our suite of offices, the first person you would normally encounter would be Mrs. Wright. Her desk was right at the doorway.

So, if Mrs. Wright were at her desk—and I'm not saying that she was or wasn't, I don't know—she would have had to pass Mrs. Wright before she could pass my office to go to Mr. Wright's office.

I just don't know. I just remember this woman coming past my office that—I mean, somebody identified to me as her being the judge's secretary, delivering this document that we needed at that time.

The CHAIRMAN. Mr. Goodman.

Mr. GOODMAN. Thank you, Mr. Chairman.

Mr. SWANSON. Can I add a little bit to that answer? And at that point I didn't even know who the judge was. If he walked by, somebody would have had to tell me that's Judge Claiborne because I was new in town and didn't know who he was, other than I was working on his tax return.

REDIRECT EXAMINATION

Mr. GOODMAN. Mr. Swanson, was it your understanding that you had a discussion with representatives of the FBI about the judge's secretary being in the office?

Mr. SWANSON. I believe that is correct.

Mr. GOODMAN. When would that conversation have taken place?

Mr. SWANSON. Sometime subsequent to October 1, 1982, and prior to the judge's trial.

Mr. GOODMAN. Before the first trial?

Mr. SWANSON. I cannot be positive of that. Before the second trial, I know I—there was only one meeting. They must have records of when it was. I do not.

Mr. GOODMAN. Was it one or two agents who questioned you?

Mr. SWANSON. Two.

Mr. GOODMAN. Did they identify themselves as being representatives of the FBI or IRS, or both?

Mr. SWANSON. One identified himself as being a representative of the Internal Revenue Service, and one identified himself as being a representative of the FBI.

Mr. GOODMAN. Would one person's name be Skelton?

Mr. SWANSON. I do not know.

Mr. GOODMAN. Would one person's name be Gessinger?

Mr. SWANSON. I do not know.

Mr. GOODMAN. But you told them that you were advised that the judge's secretary was in the office delivering papers around tax time?

Mr. SWANSON. I believe I did.

Mr. GOODMAN. Mr. Chairman, I would respectfully renew my request for the Chair to examine the sealed material to ascertain whether or not such a report is in the file.

If we were precluded from that report, this being the very heart of the prosecution, if there is such a report, I submit to the Chair that there would never have been a conviction in this case.

The CHAIRMAN. We will take that under advisement.

Any further questions of Mr. Swanson?

Mr. GOODMAN. No, sir.

The CHAIRMAN. Is there any need for Mr. Swanson to remain?

Mr. GOODMAN. We would excuse him, Mr. Chairman.

The CHAIRMAN. Mr. Chabraja.

Mr. CHABRAJA. Certainly we would excuse him.

The CHAIRMAN. Thank you.

[Witness excused.]

The CHAIRMAN. Mr. Swanson, the committee asks that you remain available until further notice.

Mr. Goodman, your next witness.

Mr. GOODMAN. Our next witness will be Judy Ahlstrom.

The CHAIRMAN. Will you please raise your right hand?

Do you swear that the testimony that you are about to give in this impeachment proceeding will be the truth, the whole truth and nothing but the truth so help you God?

Ms. AHLSTROM. I do.

DIRECT EXAMINATION

Mr. GOODMAN. Please state your name and spell your last name for the record.

Ms. AHLSTROM. Judy Ahlstrom, A-h-l-s-t-r-o-m.

Mr. GOODMAN. And, Ms. Ahlstrom, where do you reside?

Ms. AHLSTROM. Las Vegas, Henderson, NV.

Mr. GOODMAN. Is Henderson on the outskirts of Las Vegas?

Ms. AHLSTROM. Yes.

Mr. GOODMAN. All right. And at this time how are you employed?

Ms. AHLSTROM. I am still employed at the U.S. court in Judge Claiborne's chambers.

Mr. GOODMAN. In what capacity?

Ms. AHLSTROM. At the present time?

Mr. GOODMAN. Yes.

Ms. AHLSTROM. Right now I am keeping up the library. I am assisting in the clerk's office, in particular the jury commissioner, and preparing immigration certificates and about anything else that they want me to do.

Mr. GOODMAN. Prior to going to work for Judge Claiborne, did you have the occasion to work for any Member of the U.S. Senate?

Ms. AHLSTROM. Yes, sir. I worked for Senator Howard Cannon.

Mr. GOODMAN. And when did you work for Senator Cannon?

Ms. AHLSTROM. I went to work for him January 1965.

Mr. GOODMAN. And how long did you work for him?

Ms. AHLSTROM. I left his employ, I believe, January 1971.

Mr. GOODMAN. Have you ever had the occasion to work out at the Nevada Test Site?

Ms. AHLSTROM. Yes, I worked out there.

Mr. GOODMAN. And what is the Nevada Test Site?

Ms. AHLSTROM. It is the test site for—the Nevada Test Site where they test nuclear weapons.

Mr. GOODMAN. Did you have to have any special type of clearance in order to work there?

Ms. AHLSTROM. Yes; I had a Q clearance.

Mr. GOODMAN. What is the significance of a Q clearance as it existed at the time that you had it?

Ms. AHLSTROM. That was the top clearance at that time.

Mr. GOODMAN. Is that a security clearance?

Ms. AHLSTROM. Yes.

Mr. GOODMAN. Is it a clearance which is based on your trustworthiness as an American citizen?

Ms. AHLSTROM. And a background check.

Mr. GOODMAN. Now, I would like to call your attention to a period of time of April 11, 1980, and ask you at that time whether you were employed as Judge Claiborne's secretary?

Ms. AHLSTROM. Yes, I was.

Mr. GOODMAN. And, on that date, did there come a time that Judge Claiborne asked you to do anything for him?

Ms. AHLSTROM. Yes; he asked me to deliver a letter and a check to Jay Wright.

Senator RUDMAN. Mr. Chairman, could she pull the microphone closer so that we can hear her?

The CHAIRMAN. Would you mind repeating that last sentence?

Ms. AHLSTROM. What was the last question?

Mr. GOODMAN. On April 11, 1980, did Judge Claiborne ask you to do anything for him?

Ms. AHLSTROM. Yes; he asked me to deliver a letter and a check to Jay Wright.

Mr. GOODMAN. Did he give you the letter?

Ms. AHLSTROM. Yes, he did.

Mr. GOODMAN. Was it a handwritten letter?

Ms. AHLSTROM. Yes, it was.

Mr. CHABRAJA. Objection, Your Honor. Excuse me. Mr. Chairman, I do not think he can lead this witness through this testimony. You are really asking——

The CHAIRMAN. Ask her what she was given.

Mr. GOODMAN. What did Judge Claiborne give you on April 11, 1980?

Ms. AHLSTROM. He gave me a letter and a check made out to the Internal Revenue Service.

Mr. GOODMAN. Did he give you anything else?

Ms. AHLSTROM. No.

Mr. GOODMAN. Did you do anything with the letter and the check?

Ms. AHLSTROM. I copied the letter.

Mr. GOODMAN. How did you copy it?

Ms. AHLSTROM. On a copy machine.

Mr. GOODMAN. I ask you to turn to exhibit No. 36 in that folder there.

Ms. AHLSTROM. 36?

Mr. GOODMAN. 36.

Ms. AHLSTROM. OK.

Mr. GOODMAN. Do you recognize that letter?

Ms. AHLSTROM. Yes, sir.

Mr. GOODMAN. How do you recognize it?

Ms. AHLSTROM. That is the letter that he gave me with the check to take over to Jay Wright.

Mr. GOODMAN. Are you able to describe the check which you delivered to Jay Wright?

Ms. AHLSTROM. It was just a check with no special fancy designs or——

Mr. GOODMAN. At this time I am going to ask you to look at exhibit No. 3 in the other folder.

Do you recognize that document?

Ms. AHLSTROM. Yes. That is the check.

Mr. GOODMAN. That is the check that you were asked to give to Mr. Wright?

Ms. AHLSTROM. Yes, sir.

Mr. GOODMAN. All right. At this time——

Senator HEFLIN. Which folder are you all talking about? Which 3?

Mr. GOODMAN. Mr. Chairman, I am sorry. There was a separate folder which contains the respondent's exhibits. It is the smaller of the folders. And it is exhibit No. 3 contained therein.

At this time, I would move the admission of exhibit 3.

The CHAIRMAN. Do you have any objection?

Mr. CHABRAJA. Your Honor, we do not have such an exhibit. We have No. 1 in a book, and then No. 9, No. 10—oh, we had it? I am sorry.

Yes, I have an objection. This witness certainly cannot authenticate that check.

Mr. GOODMAN. I submit that it is not being offered for the matter that Judge Claiborne had $8,000 in his bank account. It is being offered for the fact that she delivered this particular document to Jay Wright. Although Judge Claiborne did have $8,000 in his account.

The **CHAIRMAN**. So your purpose is to seek its identification as the item that she personally carried?

Mr. **GOODMAN**. Yes. Yes, that is correct.

The **CHAIRMAN**. I think we will overrule the objection.

[Wherepon, Claiborne's exhibit No. 3 was received in evidence.]

Mr. **GOODMAN**. After you copied the letter, what did you do with the check and the letter?

By the way, did you copy the check?

Ms. **AHLSTROM**. I am not certain. I think I probably did.

Mr. **GOODMAN**. All right. What did you do after you copied the letter with the letter and the check?

Ms. **AHLSTROM**. I pulled the W-2, his W-2 out of his financial file. I put them together. This was after I copied the check and the letter?

Mr. **GOODMAN**. Yes.

Ms. **AHLSTROM**. I put them together in an envelope and delivered them to Jay Wright's office.

Mr Goodman. And to what office did you deliver it?

Ms. **AHLSTROM**. The office on South Commerce.

Mr. **GOODMAN**. What time of day did you deliver the check and the letter dated April 11, 1980?

Ms. **AHLSTROM**. I believe it was in the morning.

Mr. **GOODMAN**. And how did you deliver it?

What did you do when you delivered it?

Ms. **AHLSTROM**. I just took it into the—I walked in the front. There was a girl sitting there. I told her I had something for Jay Wright and she directed me over to his secretary, and I left the envelope with her.

Mr. **GOODMAN**. You handed the envelope to the secretary?

Ms. **AHLSTROM**. Yes, I did.

Mr. **GOODMAN**. Do you know who the secretary is as you sit there on the witness stand today?

Ms. **AHLSTROM**. I do now, yes. Mrs. Wright.

Mr. **GOODMAN**. And when did you first ascertain that it was Mrs. Wright to whom you delivered the letter?

Ms. **AHLSTROM**. During the trial when I found out that his wife was his secretary.

Mr. **GOODMAN**. All right. Now, do you know what Mrs. Wright looks like?

Ms. **AHLSTROM**. Yes.

Mr. **GOODMAN**. Are you telling the committee that you delivered it to Mrs. Wright because you recall what Mrs. Wright looks like or because you have been told that Mrs. Wright was the secretary to her husband?

Ms. **AHLSTROM**. I am telling you I delivered it to the woman that was his secretary that I have later seen, and it is the same person as Mrs. Wright.

Mr. **GOODMAN**. Had you ever been to Mr. Wright's office before April 11, 1980?

Ms. **AHLSTROM**. I had been to Mr. Wright's office one other time.

Mr. **GOODMAN**. Was that before or after April 11, 1980?

Ms. **AHLSTROM**. I am not sure.

Mr. **GOODMAN**. But you have been there on two occasions?

Ms. **AHLSTROM**. That is correct.

Mr. GOODMAN. Nothing further.

The CHAIRMAN. Mr. Chabraja——

Mr. CHABRAJA. Yes?

The CHAIRMAN. While you are coming forward, on behalf of the Senator from New Hampshire, Mr. Rudman, let me ask you this question, Ms. Ahlstrom.

If you know, why did Judge Claiborne use his old law firm letterhead since he had the court letterhead, the judicial letterhead available?

Ms. AHLSTROM. I would not know, sir. I really do not know why he would use it. He had some. I do not know why. I could not answer that.

The CHAIRMAN. What was the judge's usual practice? You were his secretary.

Ms. AHLSTROM. Yes, in Federal court.

The CHAIRMAN. In Federal court.

And what was the Judge's usual practice with respect to memorandums,, notes, personal letters? Did he use the court stationery or did he use his old law firm stationery?

Ms. AHLSTROM. I do not—do you mean like to an accountant or something other than court business?

The CHAIRMAN. Yes.

Ms. AHLSTROM. I did not—to be honest, I did not really handle very much of anything on the—very little on a personal basis that he did.

He would rarely give me something like that to do.

The CHAIRMAN. So your testimony is that you did not have an opportunity to observe personal notes or personal business communications or correspondence that the judge wrote?

Ms. AHLSTROM. If it concerned something with the court system, I did. In that instance, it would be given to me in a handwritten form or in dictation form and be typed up on court stationery. This particular item was not court business.

The CHAIRMAN. Senator Pryor asked when did you begin working for Judge Claiborne?

Ms. AHLSTROM. December 1978.

The CHAIRMAN. Was the typewritten portion—I am looking at the check now—Senator Heflin asks were the typewritten portions of the check for $8,000 on it at the time you delivered it to Mr. Wright?

Ms. AHLSTROM. No, they were not.

The CHAIRMAN. Several members of the committee have expressed an interest in knowing whether Mr. Swanson can identify Ms. Ahlstrom as the person that he saw in the office.

Mr. Swanson, would you come forward?

Now, Mr. Swanson, you were previously sworn. Your oath is still binding on you so anything you say now will be sworn testimony.

Do you recognize this witness, Ms. Ahlstrom, as the person that you saw in Mr. Wright's office?

Mr. SWANSON. I do not know whether this is or is not the person that I saw in Mr. Wright's office.

The CHAIRMAN. Ms. Ahlstrom, do you recognize Mr. Swanson as a——

Ms. AHLSTROM. I really did not pay too much attention to anybody in the office when I delivered it that day, except the receptionist. I did notice her.

The CHAIRMAN. Thank you, Mr. Swanson.

Mr. SWANSON. Am I now excused or must I still stay?

The CHAIRMAN. No. If you will still remain available until further notice from the committee.

Mr. SWANSON. Thank you.

The CHAIRMAN. On House Exhibit No. 36, which is the letter that you say you carried to Mr. Wright's office, on the righthand top corner, there is a notation 11-83 first shown to him by Delta.

Ms. AHLSTROM. Yes.

The CHAIRMAN. Was that on the letter at the time you took it?

Ms. AHLSTROM. No.

The CHAIRMAN. Do you know whose handwriting that is?

Ms. AHLSTROM. No.

The CHAIRMAN. On Defendant's Exhibit No. 3, which is the check for $8,000, dated April 11, 1980, there is a check number 0302.

Ms. AHLSTROM. Yes, sir.

The CHAIRMAN. Senator Heflin wants to know whether you have checked whether that is a number in sequence with other checks in Judge Claiborne's checkbook?

Ms. AHLSTROM. I have never kept Judge Claiborne's personal checking account records.

The CHAIRMAN. So you do not know whether this is a check written out of order or whether it follows in sequence?

Ms. AHLSTROM. I could not testify to that, sir, no.

The CHAIRMAN. Would you refresh the committee's recollection on one point?

How many times have you been to Mr. Wright's office?

Ms. AHLSTROM. Twice.

The CHAIRMAN. Thank you.

What was the other time beyond April 11?

Ms. AHLSTROM. To the best of my recollection, I believe I was delivering a statement that had been misplaced or lost. I had picked it up from the bank, a copy of the statement from the bank, and dropped it off at his office.

The CHAIRMAN. Did either the FBI or the Internal Revenue Service ever question you about delivering a letter and the check to Mr. Wright's office on April 11, 1980?

Ms. AHLSTROM. Prior to the trial? No. Well, no, the FBI did—no. The answer is no. I am sorry.

The CHAIRMAN. Did you deliver anything else on April 11, 1980?

Ms. AHLSTROM. No; I did not.

The CHAIRMAN. Just the check and the letter?

Ms. AHLSTROM. Along with the W-2.

The CHAIRMAN. There was a W-2 as well?

Ms. AHLSTROM. Yes, sir.

The CHAIRMAN. And all three items were in an envelope?

Ms. AHLSTROM. Yes; they were.

The CHAIRMAN. Did you put them in the envelope?

Ms. AHLSTROM. Yes, I did.

The CHAIRMAN. Or did Judge Claiborne just give you the envelope with the items in it?

Ms. AHLSTROM. No. I had the W-2. That is why—I mean he could have filled the envelope up before handing—I had the W-2's.

The CHAIRMAN. So you took these three items, the check, W-2, and the handwritten letter, and you personally put them in an envelope?

Ms. AHLSTROM. Yes; I did.

The CHAIRMAN. And then you carried them to Mr. Wright's house?

Ms. AHLSTROM. Yes, I did.

The CHAIRMAN. Senator Pryor asks you to repeat your question on whether the FBI or the IRS ever questioned you about delivering the letter?

Ms. AHLSTROM. No. No.

The CHAIRMAN. And that is either the FBI or the IRS?

Ms. AHLSTROM. Yes, sir.

I was confused when you first asked me the question. I was thinking of the trial. The FBI and IRS did not question me in the trial either. So the answer is no anyway.

The CHAIRMAN. Thank you.

Mr. Chabraja.

Mr. CHABRAJA. Thank you, Mr. Chairman.

CROSS EXAMINATION

Mr. CHABRAJA. Ms Ahlstrom, if I understand your testimony, you have been working for Judge Claiborne since 1978 when he was elevated to the Federal bench, is that right?

Ms. AHLSTROM. After——

Mr. CHABRAJA. Immediately?

Ms. AHLSTROM. A couple of months after.

Mr. CHABRAJA. All right. And you have worked for him as his secretary in his personal chambers there in the Federal courthouse in Las Vegas?

Ms. AHLSTROM. That is correct.

Mr. CHABRAJA. And I take it that you are very loyal to him?

Ms. AHLSTROM. Yes, I am.

Mr. CHABRAJA. And if I understand your testimony, Judge Claiborne handed you the handwritten document that is found in that booklet you have as exhibit, I believe it is—let me see if I can find it—34?

Ms. AHLSTROM. Six.

Mr. CHABRAJA. Thirty six. Thank you.

He handed that to you?

Ms. AHLSTROM. Yes, he did.

Mr. CHABRAJA. All right. And apparently you skimmed it? Skim it or read it?

Ms. AHLSTROM. I read it.

Mr. GOODMAN. Mr. Chairman——

Mr. CHABRAJA. You read it carefully?

Ms. AHLSTROM. Yes, I did read it carefully.

Mr. GOODMAN. Can you tell me right off the bat, Mr. Chairman, why the witness has to be screamed at trying to answer the questions in an orderly manner? I would submit that Mr. Chabraja should treat her like a lady.

The **Vice Chairman**. Well, I would say to counsel I think Mr. Chabraja is doing that in the line of questioning he is pursuing. It is irrelevant. I think he can continue.

Mr. **Chabraja**. Ms. Ahlstrom, I am sorry if you perceived any discourtesy on my part. Let me be a little more slow and deliberate.

Thank you, Mr. Chairman.

I am trying to ascertain whether you read the document with great care when it was handed to you or whether you skimmed it, which is it?

Ms. **Ahlstrom**. I read the document—really do not know how to answer you. I read the document.

Mr. **Chabraja**. In detail?

Ms. **Ahlstrom**. Yes.

Mr. **Chabraja**. You read it in detail?

Ms. **Ahlstrom**. Yes, I did.

Mr Chabraja. Let me ask you if you recall testifying on Thursday, March 22,, 1984, in the Federal courthouse in Reno, NV, at Judge Claiborne's first trial? Do you recall testifying there?

Ms. **Ahlstrom**. I recall testifying there, yes.

Mr. **Chabraja**. And you recall being under oath?

Ms. **Ahlstrom**. I do.

Mr. **Chabraja**. OK. And do you recall being asked—and let me give counsel page and line, beginning at page 1542, line 22, going over through line 9 on the next page.

Do you recall, Ms Ahlstrom, being asked these few questions and giving these answers at that time?

> *Question*. Now, when he was asking you to deliver that for him, was he also asking you to read it?
>
> Answer. He didn't ask me to read it, no.
>
> *Question*. Did you read it?
>
> I—yeah, I read it because I had to pull out the W-2 form and stuff to go with it, and I have seen it, yes.
>
> *Question*. Did he ask you?
>
> Answer. I didn't read it in great detail. I didn't care what was in it.
>
> *Question*. But you have skimmed it just out of your curiosity as to what it was?
>
> Answer. I just skimmed it because I was copying it and waiting for other things to be copied."

Do you remember being asked those questions and stating those——

Ms. **Ahlstrom**. Yes, I did.

Mr. **Chabraja**. Thank you.

As a general proposition, Ms. Ahlstrom, did you read the Judge's personal mail?

Ms. **Ahlstrom**. As a general proposition, if it was given to me, I did.

Mr. **Chabraja**. You did. Any personal document that he gave you?

Ms. **Ahlstrom**. That he would give me.

Mr. **Chabraja**. OK. We recall that you testified on Thursday, March 22, in Reno, NV.

Do you recall being asked these questions and giving these answers in the testimony, Mr. Goodman and Mr. Chairman, found at page 1542, commencing at line 9?

The question put to you, Ms. Ahlstrom, was on the occasions that you make deliveries for him, do you read the documents that he's asking you to deliver?

Answer. Not as a general rule, no.
Question. Generally as part of your responsibilities as a personal confidential secretary you wouldn't do that, would you?
Answer. No.

Do you recall being asked those questions and giving those answers on Thursday, March 22, 1984?

Ms. **Ahlstrom**. Yes, I do.

Mr. **Goodman**. I would interpose an objection. This is not impeachment and it's not going to anything inconsistent that the witness has said, and it's improper cross examination.

Mr. **Chabraja**. May I speak to that, Mr. Chairman?

Unless my ears deceive me, I think she specifically denied the same question, specifically answered it to the contrary, just like the prior impeachment.

The **Vice Chairman**. The objection is overruled.

Mr. **Chabraja**. Ms. Ahlstrom, did you, during the course of your duties for the Judge in the Federal courthouse, get involved in Judge Claiborne's personal finances at all?

Ms. **Ahlstrom**. I don't understand the question. Like how? Like——

Mr. **Chabraja**. Well, let me help if I can.

Did you write checks for him to pay his household bills?

Ms. **Ahlstrom**. No; I did not.

Mr. **Chabraja**. OK. Did you maintain any of his personal documents or personal financial records for him?

Ms. **Ahlstrom**. A few.

Mr. **Chabraja**. OK. Did you discuss his financial affairs with him?

Ms. **Ahlstrom**. No.

Mr. **Chabraja**. Did you read his personal financial papers?

Ms. **Ahlstrom**. I really don't know what you're asking for.

Mr. **Chabraja**. Well, maybe I can help out a little bit. I'm sorry if you don't understand my question.

What personal financial documents or records of his did you maintain?

Ms. **Ahlstrom**. I kept the earning records that came in with his checks. I would keep the W-2's. I would keep copies of things that he may have given me that would be needed in the future possibly, or maybe get lost. I would put things in there when he would say would you put this in my financial file.

Mr. **Chabraja**. Did you maintain any personal tax related correspondence for Judge Claiborne?

Ms. **Ahlstrom**. If I were given it or if I had a copy of something in that regard, I would put it in his financial file.

Mr. **Chabraja**. Ms. Ahlstrom, once again I refer you back to your testimony before the jury in Reno, NV, on March 22, and I ask you—page 1541, counsel—line 19, whether you were asked on that occasion these questions and gave these answers.

Question. Did you maintain any of his personal documents or personal financial records for him?
No.

Did you discuss his financial affairs with him?
Nope.
Did you read his personal financial papers?
No, I know.

Do you recall being asked those questions and giving those answers?

Ms. **Ahlstrom**. Vaguely.

Mr. **Chabraja**. Vaguely?

Ms. **Ahlstrom**. Vaguely.

Mr. **Chabraja**. Well, referring your attention once again to exhibit 36, you didn't type that document, did you, for the judge?

Ms. **Ahlstrom**. No, I didn't.

Mr. **Chabraja**. And it certainly didn't require your review, did it?

Ms. **Ahlstrom**. Insofar as I needed to include documents that he was sending over, I did.

Mr. **Chabraja**. Once you delivered a letter and its contents over to Mrs. Wright, what did you do with the photocopy?

Ms. **Ahlstrom**. To the best of my memory, I put a copy in his financial file in the office.

Mr. **Chabraja**. You maintained a financial file?

Ms. **Ahlstrom**. Yes.

Mr. **Chabraja**. Were there any other tax documents, tax related documents in that financial file?

Ms. **Ahlstrom**. That was the file we were just discussing with the earning records, the W-2 forms, and any other types of financial documents.

Mr. **Chabraja**. All right. After you put the letter, exhibit 36, or a copy of it in that file, when did you next see it?

Ms. **Ahlstrom**. After the indictment.

Mr. **Chabraja**. After the indictment was returned?

Ms. **Ahlstrom**. That's correct.

Mr. **Chabraja**. And I take it that somebody asked you to go into the file and retrieve it?

Ms. **Ahlstrom**. No. I don't——

Mr. **Chabraja**. Well, how did you come to see the document?

Ms. **Ahlstrom**. I was handed the document and asked if I had seen it, if I remembered it, if I recognized it.

Mr. **Chabraja**. So you didn't go get it from the file?

Ms. **Ahlstrom**. That's correct.

Mr. **Chabraja**. All right. And after you put this document that Judge Claiborne gave you and had photocopied it, you put it away in that personal financial file, you hadn't seen it again for some 3½ years?

Ms. **Ahlstrom**. Not to my recollection. But I wouldn't be looking for it.

Mr. **Chabraja**. Is 3½ years about right? Let's see if we can't place when you saw it again.

Ms. **Ahlstrom**. Wait a minute. Yes.

Mr. **Chabraja**. That's about right.

And who was it that handed it to you when you saw it?

Ms. **Ahlstrom**. I believe that it was Mr. Goodman that handed it to me.

Mr. **Chabraja**. Mr. Goodman?

Ms. **Ahlstrom**. Yes, sir.

Mr. **Chabraja**. Was anyone else present?

Ms. **Ahlstrom**. Judge Claiborne was present, and I believe Mr. Raggio.

Mr. **Chabraja**. Mr. Raggio is an attorney who was representing Judge Claiborne?

Ms. **Ahlstrom**. Yes.

Mr. **Chabraja**. You make copies of an awful lot of things for Judge Claiborne, don't you, Ms. Ahlstrom?

Ms. **Ahlstrom**. I make a lot of copies, yes.

Mr. **Chabraja**. And you copy almost every document that comes across your desk, don't you?

Ms. **Ahlstrom**. If it needs copying, I copy it.

Mr. **Chabraja**. OK. And who makes the decision about whether it needs copying?

Ms. **Ahlstrom**. I do unless I'm specifically asked to copy something.

Mr. **Chabraja**. But do you make copies of virtually everything?

Ms. **Ahlstrom**. You just asked me that question. If it needs copying, I make a copy of it.

Mr. **Chabraja**. Let me direct your attention to the second trial, August 1984, page 268—628, excuse me. Let me ask you if you were asked this question and gave this answer. The question was put to you by the court, line 12 on that page.

"You make copies of lots of things, don't you?

"The **Witness**. Yes, sir, I make copies of everything."

Do you remember being asked that question and giving that answer?

Ms. **Ahlstrom**. Yes.

Mr. **Chabraja**. OK. Thank you.

By the way, after having examined the letter when Judge Claiborne gave it to you, and you apparently read it, put it in the envelope and then put a copy of it in the file, do you remember what it said?

Ms. **Ahlstrom**. I remember portions of it. In fact—yes, I remember the majority.

Mr. **Chabraja**. You remember the majority of it?

Ms. **Ahlstrom**. Yes.

Mr. **Chabraja**. And you did when Mr. Goodman handed it to you and you looked at it, and you could remember the contents of that document?

Ms. **Ahlstrom**. I recognized it as the document that I had had, yes.

Mr. **Chabraja**. OK.

Ms. **Ahlstrom**. That I copied.

Mr. **Chabraja**. And you recognized that because you remembered the contents of the document, isn't that right?

Ms. **Ahlstrom**. Yes.

Mr. **Chabraja**. All right.

Ms. **Ahlstrom**. I think that's fair.

Mr. **Chabraja**. Let me direct your attention, once again, Ms. Ahlstrom, to the transcript of the second trial which occurred in August 1984, and let me ask you if you remember being asked this question and giving this answer at page 628, line 5.

Once again, the question was put to you by the court. "How do you remember, after 5 years, the precise language of a particular document that you say you made a copy of?"

"The WITNESS. I don't know. He put the thing in front of me and that is the document I copied. I mean, if you had asked me to tell you, read it to you or tell you what was in it, I could not have told you."

Do you remember being asked that question and giving that answer?

Ms. AHLSTROM. I remember giving that answer.

Mr. CHABRAJA. You do. OK.

Ms. AHLSTROM. I believe—I believe that there's a portion missing. I believe that there is——

Mr. CHABRAJA. You think there is more to it? Let me see if I cannot find a transcript for you and maybe we will explore that further.

Ms. AHLSTROM. Thank you.

Mr. CHABRAJA. Let me read to you the next question that was put to you, and the next answer, and see if that stimulates your memory.

"The COURT. You make copies of lots of things, don't you?

"The WITNESS. Yes, I make copies of everything."

Mr. CHABRAJA. Which I think I had just read to you. In any event, where did the meeting between yourself, Mr. Goodman, Judge Claiborne, and Mr. Raggio take place?

Ms. AHLSTROM. In the judge's chambers.

Mr. CHABRAJA. In the courthouse?

Ms. AHLSTROM. That's correct.

Mr. CHABRAJA. Do you recall how long that meeting lasted?

Ms. AHLSTROM. I was just handed the letter and asked if I had seen it, if I remembered it, and I gave my response. That was a very short——.

Mr. CHABRAJA. Very short meeting. And how many, on how many other occasions did you visit with Mr. Goodman on the same subject?

Ms. AHLSTROM. Before the first trial, one other one, I believe.

Mr. CHABRAJA. And then before you came here today?

Ms. AHLSTROM. Yes.

Mr. CHABRAJA. Did you have an opportunity to examine these transcripts of your prior testimony before you came here today?

Ms. AHLSTROM. Yes. I did.

Mr. CHABRAJA. OK. Was Judge Claiborne present whenever you discussed this matter with Mr. Goodman, prior to the first trial and prior to the second trial?

Ms. AHLSTROM. Which time? In chambers?

Mr. CHABRAJA. Well, let's begin with in chambers. We know he was present then.

Ms. AHLSTROM. OK.

Mr. CHABRAJA. Then you had a session just before the first trial, didn't you?

Ms. AHLSTROM. Right.

Mr. CHABRAJA. And was Judge Claiborne present?

Ms. AHLSTROM. Yes; he was.

Mr. CHABRAJA. And then I take it you had at least one other session, and that is before the second trial. Was Judge Claiborne present at that one?

Ms. AHLSTROM. I didn't, I didn't say that there was a session before the second trial.

Mr. CHABRAJA. Well, was——

Ms. AHLSTROM. Before this——

Mr. CHABRAJA. Was there a session before the second trial?

Ms. AHLSTROM. I don't remember there being one.

Mr. CHABRAJA. You do not remember whether Mr. Goodman had a preparation session for your testimony, or not?

Ms. AHLSTROM. I don't believe—I don't remember.

Mr. CHABRAJA. Do not remember. Did you ever discuss the subject of this letter just with Judge Claiborne?

Ms. AHLSTROM. Without someone else present?

Mr. CHABRAJA. Yes.

Ms. AHLSTROM. I don't believe I did.

Mr. CHABRAJA. Let me once again ask you, Miss Ahlstrom, if you remember testifying in Reno, NV, on Thursday, March 22, 1984, and I will read to you from page 1549 with reference to this letter. At line 8.

> Did you ever discuss it with Judge Claiborne? Answer: We have a briefing session at one point and I don't remember if that one was specifically mentioned. Yes, I think we did talk about it. Question: When was this briefing session? Answer: When Mr. Goodman was interviewing prospective defense witnesses.

Do you remember being asked that question, and giving—

Ms. AHLSTROM. That was for the first trial.

Mr. GOODMAN. Mr. Chairman, I am going to object. That is not impeachment. There is nothing consistent with that statement and what the witness has testified to.

Mr. CHABRAJA. I think the witness just testified that she had no recollection of a briefing session with Judge Claiborne.

Ms. AHLSTROM. For the second trial, not the first trial.

Mr. GOODMAN. I am going to withdraw my objection.

The CHAIRMAN. The objection is withdrawn.

Mr. CHABRAJA. Thank you, Your Honor. And I take it that you want to make a clarification. Your testimony that you never had a briefing session related to the second trial, not to the first, is that right?

Ms. AHLSTROM. That's—yes.

Mr. CHABRAJA. That is correct. And with respect to the first trial, you had a briefing session with Judge Claiborne, is that true?

Ms. AHLSTROM. And Mr. Goodman.

Mr. CHABRAJA. OK. So it is the same meeting you had talked about earlier?

Ms. AHLSTROM. Yes.

Mr. CHABRAJA. Both were present. When you went to the Wrights' office, did you see Mr. Jay Wright, Joseph Wright?

Ms. AHLSTROM. I don't remember specifically seeing Mr. Wright.

Mr. CHABRAJA. All right. Mr. Chairman, may I have a moment. I hear a buzz over here, and consult with the managers?

The CHAIRMAN. Consult. While you are doing that, let me ask you on behalf of the Senator from New Mexico, Mr. Bingaman, who says: During the time that you worked for Judge Claiborne, did he say anything to you, or ask you to perform any act which made you believe that he was trying to cheat on his taxes?

Ms. **Ahlstrom**. Never.

Mr. **Rodino**. Mr. Chairman, I advise the committee that the House has two votes on a conference report. My question is whether or not the Chair intends for the committee to continue on for any length of time, because the two votes will take all of about 30 minutes.

The **Chairman**. Well, it is now about a quarter to 5, and I would anticipate that if you estimate 30 minutes you will be 45.

Mr. **Rodino**. Well, actually, we would be no less than—no more than 30, and probably less.

The **Chairman**. But I——

Mr. **Rodino**. I would, under the circumstances, request, Mr. Chairman, that we recess at this time, if it is the Chair's anticipation that we might go on later. That we would be caught up now. I know of only those two votes but there may be others.

Mr. **Goodman**. Mr. Chairman.

The **Chairman**. Yes, Mr. Goodman.

Mr. **Goodman**. May I inquire through the Chair, of Mr. Chabraja, as to how much longer he would have Miss Ahlstrom on? If we could get her off the stand today, I know it would be a great relief to her.

Mr. **Rodino**. I would ask the Chair to consider whether or not we cannot recess at this time in view of the fact——

The **Chairman**. Let's see what Mr. Chabraja's answer is.

Mr. **Chabraja**. I am speculating to some degree, Mr. Chairman, but I could run on a half an hour.

The **Chairman**. It is the consensus, Mr. Chairman, that we should go over until tomorrow. So, at this point we will——

Mr. **Rodino**. At what time, Mr. Chairman?

The **Chairman**. We will try to meet promptly at 9 o'clock.

Mr. **Rodino**. Thank you very much.

[Whereupon, at 4:50 p.m., the committee was adjourned, subject to the call of the Chair.]

SENATE IMPEACHMENT TRIAL COMMITTEE

Appointed Upon the Adoption of Senate Resolution 481, 99th Congress, 2d Session, Pursuant to Rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials

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WEDNESDAY, SEPTEMBER 17, 1986

U.S. SENATE,
SENATE IMPEACHMENT TRIAL COMMITTEE,
Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m., in room SR-325, Russell Senate Office Building, Hon. Charles McC. Mathias, Jr., chairman of the committee, presiding.

Present: Senators Mathias, Sarbanes, Bingaman, Gore, Pryor, DeConcini, Heflin, Hatch, Warner, Rudman, and Pressler.

Managers and counsel from the House of Representatives present: Peter W. Rodino, Jr., Robert W. Kastenmeier, William J. Hughes, Romano L. Mazzoli, Dan Glickman, Hamilton Fish, Jr., Henry J. Hyde, Michael DeWine, Nicholas D. Chabraja, special counsel; and David DeBruin, associate special counsel.

House Judiciary Committee staff present: M. Elaine Mielke, general counsel; Alan F. Coffey, Jr., associate general counsel; Judith Bailey, counsel; Daniel M. Freeman, counsel; Gary Goldberger, counsel; Warren S. Grimes, counsel; Joseph V. Wolfe, counsel; and Jonathan R. Yarowsky, counsel.

Respondent and counsel present: Hon. Harry E. Claiborne, respondent; Oscar Goodman, counsel; Michael V. Stuhff, associate counsel, and David Z. Chesnoff, associate counsel.

Staff Present: Michael Davidson, counsel; Floyd M. Riddick, consultant; John B. Childers, staff director; John F. Rixey, Jr., deputy staff director; Anthony L. Harvey, clerk; Byron F. Hoover, assistant clerk; Gerald B. Gereau, security coordinator; Ann Pincus, press liaison; and Randy Dove, press liaison.

The CHAIRMAN. The committee will come to order.

The managers have moved in limine to exclude irrelevant evidence proffered by Judge Claiborne. Judge Claiborne has filed a written opposition to that motion. We heard argument on the motion on Monday.

Then, in response to an interim ruling which we issued on Monday, we heard Judge Claiborne's proffer of evidence yesterday, and we also heard the response of the managers.

We have given particular attention in examining the contentions of the parties to the issues which are delineated by the affirmative defenses in the formal answer to the Articles of Impeachment which Judge Claiborne has filed with the Secretary of the Senate.

We have previously passed on one aspect of the managers' motion when we provided that Judge Claiborne may present to the committee no more than 10 character witnesses. I will now state my ruling on the remainder of the managers' motions, subject to the right of members of the committee to ask for a formal vote.

One of our central concerns in preparing a record for the Senate's consideration is the reliability of that record as a basis for the Senate's judgment in this impeachment proceeding. To this end, we are concerned, naturally, about any allegation that the testimony of witnesses who have or will appear before us has been influenced by agents of the Government. Without crediting allegations which are before us only on the assertions of counsel, we are prepared to hear the testimony of Internal Revenue Service Agent Donald Skelton and Federal Bureau of Investigation Agent Richard Jesinger. We have already taken steps to arrange for their appearance before the committee.

These persons, it may be recalled, are the Government agents who, we are told, interviewed the managers' witness, Joseph W. Wright.

Now, just this morning, counsel for Judge Claiborne has asked that we call an additional Internal Revenue Service agent, Leo Halper, and we will attempt this morning to determine the availability of this witness.

We are prepared, also, to allow counsel for Judge Claiborne to examine two of his own witnesses, Jerry Watson and Charlotte Travaglia, on communications between them and agents for the Government. Judge Claiborne is planning to call Lawrence Semenza, Mr. Watson's counsel, as a witness, and may wish to question Mr. Semenza about Mr. Watson's treatment by Government agents. We will permit that questioning.

In all other respects, I will grant the managers' motion to exclude, subject to Judge Claiborne's right to renew before us an application for specific additional subpoenas if the testimony of any of the witnesses who will be heard by the committee, including the witnesses that I have mentioned in this order, establish the need for testimony by additional persons.

Also, because our authority as a committee only extends to the record which is created before us, Judge Claiborne will be free to move after we report to the Senate that the Senate require the testimony of additional witnesses. Without trying to cover all of the issues presented by Judge Claiborne's applications for numerous subpoenas, I would like to mention several dominant concerns.

First, with respect to the requested subpoenas for members of the Judiciary, I continue to believe, as I stated on September 10, that Judge Claiborne's allegations of bias or other failings in the judicial branch are not relevant to these impeachment proceedings. As I indicated at that time, we, not members of the judicial branch, will be the sole judges of the facts and the law which are germane to our constitutional responsibilities.

Second, with respect to any deficiencies in the bribery prosecution of Judge Claiborne, those allegations are not relevant to the question of whether he should be removed from office on account of violations of the Internal Revenue laws.

Third, with respect to the allegation that documents of Judge Claiborne were photographed during a burglary, we are prepared to receive affidavits from Judge Claiborne and the affidavits which the Department of Justice has tendered in opposition to the pending post-trial proceedings, but not to summon witnesses to appear before the committee.

The clerk of this committee shall mark as committee exhibits the post-trial pleadings of the Government and Judge Claiborne which contain their positions and affidavits on this issue.

Without reaching the larger issue of whether the exclusionary rule has any place in an impeachment proceeding, the record indicates that there is nothing to exclude, even if the allegations are credited. At most, the alleged burglary provided the executive branch with information about Judge Claiborne's receipt of legal fees in 1979 and in 1980. There is, however, no dispute in these impeachment proceedings about the receipt of those fees. Judge Claiborne's admissions were received in evidence without objection yesterday. We can therefore save for another day the question of the applicability of the exclusionary rule in an impeachment.

Do any members of the committee wish to ask for a formal vote on this ruling? If not, it stands as the ruling of the committee, subject, as I have stated to Judge Claiborne's right to renew his application for specific additional subpoenas if the evidence before the committee so warrants.

Mr. Rodino. Mr. Chairman, will copies of that ruling be made available?

The Chairman. We will ask the reporter to make copies available.

Mr. Rodino. Thank you.

The Chairman. To you and to counsel for Judge Claiborne.

Mr. Goodman. Mr. Chairman, may I be heard?

The Chairman. Yes, Mr. Goodman.

Mr. Goodman. Thank you.

In order to clearly understand, Mr. Chairman, the order regarding the allegations of burglary, are we permitted to submit additional affidavits on that issue as well?

The reason that I indicate that, as you could well imagine, with the publicity that this matter has attracted, we received information as recently as last night. Every moment we get a different phone call from a different person on an issue that they think is relevant and material to these proceedings, and of course, before we can represent the validity of that issue, we have to verify it the best we can, being some 2,300 to 2,400 miles away from where the person is calling.

Last night we received information that Judge Claiborne was the subject of an airport watch in Las Vegas, and that watch was requested by Mr. Caputo who is one of the individuals we claim was involved in the burglary of the judge's home. I would hope that we would be able to supplement the record for your consideration from the person who provided that information.

The Chairman. Well, Mr. Goodman, I obviously cannot make any ruling on any affidavits that in fact do not exist at this point.

But, of course, you can offer them, and at such time that they are offered, we will make a ruling.

Mr. **Goodman**. Fine. That is all I wanted to ascertain. Thank you.

The **Chairman**. Now, when we recessed yesterday, Ms. Ahlstrom was on the witness stand. Do you wish to continue the cross-examination of Ms. Ahlstrom?

Mr. **Chabraja**. Yes.

The **Chairman**. Ms. Ahlstrom, will you return to the witness stand?

Ms. Ahlstrom, you were sworn yesterday, and you understand that the oath you took yesterday to tell the truth, the whole truth, nothing but the truth is still in effect today and your testimony is under oath?

Ms. **Ahlstrom**. Yes, I do.

Mr. **Chabraja**. Mr. Chairman.

The **Chairman**. Mr Chabraja.

CROSS-EXAMINATION—RESUMED

Mr. **Chabraja**. Good morning, Ms. Ahlstrom.

Ms. **Ahlstrom**. Good morning.

Mr. **Chabraja**. Recalling your testimony yesterday about your trip to Mr. Wright's office on April 11, 1980, my memory is that you delivered to Mrs. Wright one envelope that included a check, a W-2 form, and a letter.

Ms. **Ahlstrom**. That is correct.

Mr. **Chabraja**. And those are the only materials that you delivered to Mr. Wright that day?

Ms. **Ahlstrom**. Yes, they are.

Mr. **Chabraja**. And there was no second trip by you to his offices that day?

Ms. **Ahlstrom**. Not by me there.

Mr. **Chabraja**. All right. You mentioned making a second trip to his office, and that was on some other occasion?

Ms. **Ahlstrom**. That is correct.

Mr. **Chabraja**. All right. Prior to that or subsequent?

Ms. **Ahlstrom**. I really cannot be positively—I am not positive. I believe it was after, but——

Mr. **Chabraja**. Have you ever met Jay Wright?

Ms. **Ahlstrom**. I do not know.

Mr. **Chabraja**. You are not certain?

You have spoken to him a number of times by telephone, though, have you not?

Ms. **Ahlstrom**. Yes, I have.

Mr. **Chabraja**. All right. And you recall that you had a number of conversations with him in the spring and early summer of 1981, do you recall that?

Mr. **Goodman**. Mr. Chairman, I would object to the question as going beyond the scope of the direct.

The **Chairman**. Do you want to respond to the objection?

Mr. **Chabraja**. Mr. Chairman, it is a little difficult for me to determine what the scope of the direct was, but we are not going to get another chance to see Ms. Ahlstrom. That objection is of limited utility as the proceedings wear on.

The CHAIRMAN. I will overrule the objection.

Mr. CHABRAJA. Thank you.

Let me see if I can rephrase that question or repeat it. Do you recall having a number of conversations by telephone with Jay Wright in the spring and early summer of 1981?

Ms. AHLSTROM. I remember receiving calls from him in the spring. I do not specifically recall in the summer.

Mr. CHABRAJA. A number of calls?

Ms. AHLSTROM. A few, several.

Mr. CHABRAJA. Did you converse with him?

Ms. AHLSTROM. Only to tell him I would give the message—he was calling Judge Claiborne—that I would leave the message.

Mr. CHABRAJA. OK. Did you leave the message?

Ms. AHLSTROM. Yes.

Mr. CHABRAJA. All right. Did he tell you why he was calling Judge Claiborne?

Ms. AHLSTROM. I do not remember.

Mr. CHABRAJA. Did he tell you that he wanted to get information for Judge Claiborne's 1980 tax return?

Ms. AHLSTROM. I do not remember.

Mr. CHABRAJA. Did you ever place a call for Judge Claiborne back to Mr. Wright?

Ms. AHLSTROM. On what day?

Mr. CHABRAJA. On any of those days.

Ms. AHLSTROM. I am sure I have returned, in the years I have worked for him, calls to Mr. Wright. I cannot specifically—I do not know what time you are referring to.

Mr. CHABRAJA. Did Mr. Wright call so frequently that you stopped giving the messages to Judge Claiborne?

Ms. AHLSTROM. Yes. I mean, I could have, yes.

Mr. CHABRAJA. You remember that.

Yesterday we were talking about a file. I think you called it a personal financial file of Judge Claiborne, where you testified that you placed the letter that you photocopied. And if I could get my hands on the exhibit book, I will show it to you.

May I approach the witness?

The CHAIRMAN. Certainly.

Mr. CHABRAJA. I think yesterday we were referring to exhibit 36, and when I speak about the document, that is the one I am referring to, House exhibit 36.

You recall testifying yesterday that you remembered distinctly placing that in a file?

Ms. AHLSTROM. Yes.

Mr. CHABRAJA. As I remember, you described it as a personal financial file?

Ms. AHLSTROM. Yes.

Mr. CHABRAJA. Where did you keep that file, Ms. Ahlstrom?

Ms. AHLSTROM. In the filing cabinet in my office.

Mr. CHABRAJA. That was a file cabinet that received files to be in an upright position, sort of the way I am holding it?

Ms. AHLSTROM. Yes, sir.

Mr. **Chabraja**. Were the files we are talking about like the one I have in my hand?

Ms. **Ahlstrom**. They were manila file folders.

Mr. **Chabraja**. Manila file folders?

Ms. **Ahlstrom**. Yes.

Mr. **Chabraja**. Typical correspondence folders or a little bit larger for legal size documents?

Ms. **Ahlstrom**. Yes.

Mr. **Chabraja**. OK. And then you would place a file folder within a larger accordion file, or did it just stand upright in the drawer?

Ms. **Ahlstrom**. It just stood upright in the drawer.

Mr. **Chabraja**. OK. Tell us again what kind of documents you placed in that file?

Ms. **Ahlstrom**. It was a catch-all file for financial things like W-2's, the earning records, company checks.

Mr. **Chabraja**. Could I have that again?

Ms. **Ahlstrom**. The earning records that report what your accumulated—it comes separate from your check, but it reports your earnings.

Mr. **Chabraja**. The pay stub, the bottom half of the check?

Ms. **Ahlstrom**. Right. It would be a pay stub, normal checks, yes.

Mr. **Chabraja**. OK.

Ms. **Ahlstrom**. Any other type of financial—things that I thought went in there or we are told to put in there. I cannot specifically remember anything right now.

Mr. **Chabraja**. Were there letters?

Ms. **Ahlstrom**. There were a few letters, yes.

Mr. **Chabraja**. A few letters. OK. May I take that back?

Now, if you were putting in the pay stubs, did the Judge get paid every 2 weeks?

Ms. **Ahlstrom**. No. He got paid once a month.

Mr. **Chabraja**. Once a month. And he would tear off the bottom half?

Ms. **Ahlstrom**. It was not a pay stub. It was an earning record that came separate from the check.

Mr. **Chabraja**. It came in a separate envelope?

Ms. **Ahlstrom**. It came into the clerk's office and was put in our——

Mr. **Chabraja**. Did you get that once a month?

Ms. **Ahlstrom**. Yes.

Mr. **Chabraja**. So you would go into that file at least once a month and put it in there?

Ms. **Ahlstrom**. I would go and drop it in, yes.

Mr. **Chabraja**. Drop it in?

Ms. **Ahlstrom**. Yes.

Mr. **Chabraja**. And from the time that you put a copy of House exhibit 36 into that file until 3½ years later when Mr. Goodman showed it to you, you never saw it?

Ms. **Ahlstrom**. I had no reason to look for it.

Mr. **Chabraja**. OK. But let us be certain about one thing. You remember quite distinctly putting it into that file, do you not?

Ms. **Ahlstrom**. That is my best recollection, yes.

Mr. CHABRAJA. OK. Do you recall once again that you testified on March 22 before a jury in Reno, NV, under oath at page 1543, and I will read to you commencing at line 12, and ask you if you remember being asked these questions and giving these answers.

> *Question.* What happened to that copy?
>
> Answer. Generally, if it is personal stuff, I give it back to.
>
> *Question.* Before we get to generally, what did you do with that copy?
>
> Answer. I assume I gave it back to him or stuck it in his financial file.
>
> *Question.* Before we get to assumptions, what did you do with that copy? Do you remember?
>
> I do not remember, exactly. I did one of those two things with it. I did not keep most of his personal financial stuff unless it was something I thought that we needed to have around and might get misplaced. I just copied it and dumped it in the personal file.
>
> *Question.* And that is what you would generally do, but you do not recall doing it that day specifically?
>
> Answer. I suspect I put it in the file because he did not ask me to copy it.

Do you recall being asked those questions and giving those answers?

Ms. AHLSTROM. Yes, I do.

Mr. CHABRAJA. All right. Later in that same session, at page 1544, you were asked this question, reading from line 9:

> *Question.* You do not recall what you did with it, but you suspect that you did what you said; is that correct?
>
> Answer. Yes.

Do you recall that question and answer?

Ms. AHLSTROM. Generally.

Mr. CHABRAJA. You do not have any doubt that that is a proper transcription of your words, do you?

Ms. AHLSTROM. No. I have no reason to.

Mr. CHABRAJA. Ms. Ahlstrom, when the judge was indicted in 1983, did he quit coming into the office?

Ms. AHLSTROM. On a regular basis, he quit coming in the office.

Mr. CHABRAJA. He quit hearing cases, of course?

Ms. AHLSTROM. Yes, he did.

Mr. CHABRAJA. What did you do after he quit coming in to exercise his judicial function?

Ms. AHLSTROM. What did I do about what?

Mr. CHABRAJA. Well, what did you do as the secretary to the judge? Did you continue to report to work?

Ms. AHLSTROM. Oh, we had visiting judges coming in for a long time. We had a lot of matters under submission that our dockets were——

Mr. CHABRAJA. So you helped out on other matters?

Ms. AHLSTROM. Oh, I had a lot of work to do.

Mr. CHABRAJA. As I understand this thing, your tenure as an employee of the Federal Government is dependent on the Judge's tenure in his office?

Ms. AHLSTROM. That is my understanding also.

Mr. CHABRAJA. OK. And if a new judge comes in and replaces Judge Claiborne, he will bring in his own secretary?

Ms. AHLSTROM. I suspect so.

Mr. CHABRAJA. OK. Thank you, Ms. Ahlstrom.

The CHAIRMAN. Mr. Goodman.

Mr. GOODMAN. Thank you, Mr. Chairman.

REDIRECT EXAMINATION

Mr. GOODMAN. Ms. Ahlstrom, when the judge was indicted, he called the chief judge of the ninth circuit, did he not?

Ms. AHLSTROM. Yes, he did.

Mr. GOODMAN. And he advised the chief judge of the ninth circuit——

Mr. CHABRAJA. Objection, Mr. Chairman. This is hearsay testimony.

Mr. GOODMAN. It goes not to the truth but to the characterization of Mr. Chabraja when he said the judge quit the office. The judge was advised, after speaking to Chief Judge Browning, that he could in fact take a leave of absence until the matter was resolved.

Mr. CHABRAJA. I trust that Ms. Ahlstrom was not privy to that conversation and that we will hear from the judge on that subject, and then it will not be hearsay.

Mr. GOODMAN. Perhaps I could ask whether or not she was present when that conversation took place.

The CHAIRMAN. Why do you not put that question to her?

Mr. GOODMAN. Were you present when the judge called Chief Judge Browning?

Ms. AHLSTROM. I believe I placed the call for him.

Mr. GOODMAN. Did you know the purpose of the call?

Ms. AHLSTROM. I knew why he was calling him, yes.

Mr. GOODMAN. Why was he calling Chief Judge Browning?

Ms. AHLSTROM. To inform him of the indictment.

Mr. GOODMAN. After that phone call, what did the judge do?

Ms. AHLSTROM. I believe that he wrote a formal letter to Judge Browning taking, I think they call it, administrative leave. I am quite certain there was a letter.

Mr. GOODMAN. And thereafter you remained in the office, did you not, fulfilling your functions?

Ms. AHLSTROM. Yes, I did.

Mr. GOODMAN. Can you recall any of the visiting judges who you assisted while you were carrying out your duties and responsibilities?

Ms. AHLSTROM. There will be some I have forgotten, I am sure. Judge Bilbee, Judge Marcus from Arizona.

Mr. GOODMAN. Those are two separate judges, are they not?

Ms. AHLSTROM. Yes, that is true. Judge Craig from Arizona. There were two or three from southern California. Judge Gillam from San Diego. Judge Irving from San Diego. Judge Quackenbush from Washington. I do not know how many more I can——

Mr. GOODMAN. Would you perform secretarial functions for these gentlemen?

Ms. AHLSTROM. Oh, yes, sir.

Mr. GOODMAN. Now, at the time that you were testifying in the trials in Reno from which your testimony was read, were you nervous?

Ms. AHLSTROM. Very.

Mr. GOODMAN. Were you——

Mr. CHABRAJA. Objection. He is leading the witness in areas critical in impeachment of that witness.

The CHAIRMAN. Can you rephrase that?

Mr. GOODMAN. As you were testifying in Reno, what was your demeanor as far as you were concerned?

Ms. AHLSTROM. Scared to death.

Mr. GOODMAN. And as you testify before this honorable committee in the Caucus Room of the U.S. Senate, how do you feel about it?

Ms. AHLSTROM. Nervous, not scared to death.

Mr. GOODMAN. Why? Why the difference?

Ms. AHLSTROM. Because I do not have Judge Hoffman sitting next to me intimidating me, for one.

Mr. GOODMAN. Do you feel that you were in fact intimidated by the judge?

Ms. AHLSTROM. Yes, I did, very much so.

Mr. GOODMAN. Do you feel you have been intimidated by the honorable Senate Members?

Ms. AHLSTROM. No, sir, not at all.

Mr. GOODMAN. Do you know whether or not the items which were kept in this financial file which you have been referring to were used by the judge in preparation of his judicial ethics report?

Ms. AHLSTROM. It would have information that he would probably refer to for both that and his taxes.

Mr. GOODMAN. All right.

Ms. AHLSTROM. Sometimes.

Mr. GOODMAN. Now, yesterday Mr. Chabraja asked you about conversations that you had with me. Could you describe those conversations to the committee?

Ms. AHLSTROM. Conversations like what? Pretrial?

Mr. GOODMAN. Pretrial conversations.

Ms. AHLSTROM. There was really only one pretrial session except for the brief meeting we had. I would describe them as just being asked what I remembered about the letter, what I remembered—I was asked questions. I was asked to tell the truth. I was told——

Mr. GOODMAN. Who told you to tell the truth?

Ms. AHLSTROM. I have been told to tell the truth by everybody, but specifically Judge Claiborne assured me that if I told the truth and told everything I knew that he would not be hurt by it.

Mr. GOODMAN. Thank you. Did you in fact deliver the letter which has been referred to as exhibit No. 36 and the check, exhibit No. 3, to the office of Joseph Wright on April 11, 1980?

Ms. AHLSTROM. Yes; I did.

Mr. GOODMAN. There is no doubt in your mind about that?

Ms. AHLSTROM. There is no doubt in my mind.

Mr. GOODMAN. Thank you. No further questions, Mr. Chairman.

The CHAIRMAN. I have several questions to propound on behalf of members of the committee. The Senator from Alabama, Mr. Heflin, says: Was the file cabinet which contained the judge's financial files locked?

Ms. AHLSTROM. No, sir. There were keys in it, but I did not lock them.

The CHAIRMAN. The keys were in the lock?

Ms. AHLSTROM. Hanging there, yes, sir.

The CHAIRMAN. Nobody ever turned them and took them out.

Ms. AHLSTROM. No.

The CHAIRMAN. I have a question from the Senator from Arizona, Mr. DeConcini: To whom did you specifically deliver the April 11 letter at Mr. Wright's office?

Ms. AHLSTROM. I handed it to Mrs. Wright at her desk.

The CHAIRMAN. Did you ever see the Claiborne letter to Mr. Wright, which is exhibit 17? Perhaps one of counsel could show the witness exhibit No. 17. That was delivered approximately March 1, 1979?

[Pause.]

Ms. AHLSTROM. I don't think I have seen that, sir.

The CHAIRMAN. That's exhibit No. 17 you have not previously seen?

Ms. AHLSTROM. It certainly isn't really fresh in my mind. I suppose there's a chance that I've seen it and I have no reason to——

The CHAIRMAN. Now, I think this may cover an area that you already answered yesterday, but let me put the question, since it has been requested. Did you see the contents of the April 11, 1979, letter? That is exhibit No. 36, if you want to refresh your recollection.

Ms. AHLSTROM. 1980?

The CHAIRMAN. The April 11 letter, exhibit No. 36. Are you looking at——

Ms. AHLSTROM. Thirty-six.

The CHAIRMAN. Did you see the contents of that letter on April 11?

Ms. AHLSTROM. Would you mind repeating the question?

The CHAIRMAN. Did you read the letter?

Ms. AHLSTROM. Yes; I did read the letter.

The CHAIRMAN. At the time that Judge Claiborne gave it to you, you took it to the Xerox machine and you made a copy of it?

Ms. AHLSTROM. Yes, sir.

The CHAIRMAN. Then you folded the letter. Was it folded when Judge Claiborne gave it to you?

Ms. AHLSTROM. No, it was not.

The CHAIRMAN. And you personally folded it?

Ms. AHLSTROM. I folded it.

The CHAIRMAN. Were there dollar figures in the letter, do you recall?

Ms. AHLSTROM. Yes.

The CHAIRMAN. I mean, is that your independent recollection, that there were dollar figures in the letter?

Ms. AHLSTROM. It's my—yes, that there were dollar figures in the letter.

The CHAIRMAN. And do you remember what those dollar figures were?

Ms. AHLSTROM. Independently of—3 years later, without having seen the letter, I probably would not have remembered what the figures were—possibly, amount of the check. Are you asking me independently of having seen the letter again?

The CHAIRMAN. Yes. I just wondered if you had any independent recollection.

Ms. AHLSTROM. Yes, I knew there were dollar figures in there.

The CHAIRMAN. Do you remember whether the figure $41,073.93 was in the letter?

Ms. AHLSTROM. Not independently of seeing it again. But I am—it is my—I am certain that this is an accurate copy of the letter I delivered.

The CHAIRMAN. The letter appears to be a copy of the letter that you received from Judge Claiborne, that you folded up, having made a copy——

Ms. AHLSTROM. Yes, sir.

The CHAIRMAN. And then delivered to Mrs. Wright?

Ms. AHLSTROM. That's correct.

The CHAIRMAN. Did you see the contents of the Judicial Ethics Disclosure Form, which is exhibit No. 16?

Ms. AHLSTROM. Yes.

The CHAIRMAN. In fact, did you actually type it?

Ms. AHLSTROM. Yes, sir, I did.

The CHAIRMAN. Do you note any differences in the legal income being claimed by Judge Claiborne for 1979 as stated in these three documents? Now, the three documents that Senator DeConcini is referring to are: exhibit No. 17, exhibit No. 36, and exhibit No. 16.

Ms. AHLSTROM. Yes; they are different.

The CHAIRMAN. Would you repeat your answer?

Ms. AHLSTROM. I can see that they are different.

The CHAIRMAN. At the time that you were handling these documents, did you realize that there was a difference?

Ms. AHLSTROM. Well, I believe I just said that on 17 that I am not really sure that I saw that. I may have; I'm not familiar with it.

As to the other two articles, the Financial Disclosure Report would have been typed somewhere around the 14th or 15th, thereabouts, and I probably would not have taken it back and checked it against something else. I would type what I was——

The CHAIRMAN. Exhibit No. 17, which you say you may not have seen—you have no clear, independent recollection of having seen it at the time—indicates that Judge Claiborne's legal fee income was $45,371. Is that his handwriting as you know it?

Ms. AHLSTROM. Yes, sir, that's his handwriting.

The CHAIRMAN. Exhibit No. 36, which is the April 11 letter, indicates legal fee income of $41,073.

Ms. AHLSTROM. Yes, sir.

The CHAIRMAN. And that again is his handwriting as you know it?

Ms. AHLSTROM. Yes, it is.

The CHAIRMAN. Exhibit No. 16 indicates legal fee income of $23,050. Now, is that also his handwriting?

Ms. AHLSTROM. It's typed.

The CHAIRMAN. Is there any indication?

Ms. AHLSTROM. His signature is at the bottom of the form.

The CHAIRMAN. Is that his signature?

Ms. AHLSTROM. Yes, it is.

The CHAIRMAN. You would recognize his signature?

Ms. AHLSTROM. Yes.

The CHAIRMAN. The Senator from Arkansas, Mr. Pryor, asks: Did Mrs. Wright appear to be anticipating, was she expecting the delivery of the letter on April 11, 1980?

Ms. AHLSTROM. I couldn't answer that. She was working, busy working—I really could not answer for her. I don't know if she was anticipating it or not. I——

The CHAIRMAN. Did she do anything which would indicate that she might have been expecting it? How did she respond when you brought it to her?

Ms. AHLSTROM. To the best of my memory, I just walked over and said, "This is for Jay Wright from Judge Claiborne," and left again.

The CHAIRMAN. Did she open it at the time?

Ms. AHLSTROM. I turned around and left. I didn't watch.

The CHAIRMAN. You just handed it to her, and that was the end of the transaction as far as you were concerned?

Ms. AHLSTROM. Yes. Pardon me—my lens slip off occasionally. I just turned around and left.

The CHAIRMAN. You mentioned a moment ago that you felt intimidated because Judge Hoffman was sitting just beside you. How——

Ms. AHLSTROM. Not just—pardon?

The CHAIRMAN. Describe why you felt intimidated?

Ms. AHLSTROM. He made remarks that I felt made me look like I was not telling the truth, which I was already nervous and it just compounded the problem. He would make statements—when I was looking at my testimony the other night, I noticed at one place he said, "Well, let's take a look at her testimony last time and see what she has devised this time." This type of thing was very unnerving to me.

The CHAIRMAN. Would you repeat what words Judge Hoffman used to you?

Ms. AHLSTROM. In the transcript, there were two particular instances that I can remember that—the whole thing was definitely not friendly or relaxing, and especially under the circumstances. But typical of the thing—and this was just from looking through my transcripts in the last week—I ran across at one point where he said, "Well, let's look at her testimony last time and see what she has devised this time," or something—I might be paraphrasing somewhat, but "devised" was the word he used.

The CHAIRMAN. "What she has devised". OK.

Ms. AHLSTROM. And another time, I was being questioned while the jury was out, and once the jury got back in, and the same type of questions were being asked—the same type, but not necessarily the same questions—at one point—the jury is now back in—he turned around. The transcript reads, "Is that what you told me a few minutes ago?" I am certain that it is an error. I believe that I remember him saying, "That isn't what you told me a few minutes ago, is it?"

One time, the jury is out; the second time, the jury was in. I felt like I was being purposely made a liar of.

The CHAIRMAN. Senator Pressler asks this question: Did you check to see whether the $8,000 check had been cashed? In other words, did you get the canceled check back for the judge's records?

Ms. AHLSTROM. I didn't get his checks at all, sir. I have never seen a canceled check. I'm sure there—somebody else could testify to that.

The CHAIRMAN. Well, his further question may have been answered by that response, but he says: Did you keep the judge's bank account up-to-date? Did you do all his personal financial records?

Ms. AHLSTROM. I did very, very little personal work for Judge Claiborne at all; very little.

The CHAIRMAN. Senator Sarbanes asks you to look at exhibit No. 16.

Ms. AHLSTROM. Yes, sir.

The CHAIRMAN. Did you type the financial disclosure statement?

Ms. AHLSTROM. Yes; I am certain I did.

The CHAIRMAN. Can you say when it was typed?

Ms. AHLSTROM. It would have been the 13th, 14th or 15th. It had to be mailed by the 15th. I can't say for certain. I don't even know what day that was—May 15, 1980.

The CHAIRMAN. The 15th of May?

Ms. AHLSTROM. It would have been typed within a two-day period prior to the 15th, any time.

The CHAIRMAN. Now, in the item that is identified as "Client's Fees While in Private Practice," there is an amount typed in, "$23,050.76." Where did you get that figure?

Ms. AHLSTROM. I imagine from a rough draft, the rough draft he usually gave me. Either that or, occasionally, he would number the item and write the thing to be filled in on a yellow pad.

The CHAIRMAN. When you came to that item and began to type it, "$23,050.76," did it register with you that that was a different item than the one that you had seen on April 11?

Ms. AHLSTROM. No, sir; it didn't register with me. I didn't—it didn't even cross my mind. I was just interested in getting the work out for that day. It didn't enter my mind to check it.

The CHAIRMAN. The Senator from Virginia, Mr. Warner, asks: "Do you feel that Judge Hoffman treated other witnesses in a firm manner?"

Ms. AHLSTROM. Some were treated better than others.

Does that—I——

The CHAIRMAN. Were you present during the testimony of other witnesses?

Ms. AHLSTROM. The second trial—one trial, I wasn't in until Judge Claiborne took the stand. I was excluded the entire time. The other—the other trial, I did get to watch, at least part of it.

[Pause.]

The CHAIRMAN. The Senator from Virginia propounds this question: Do you know why Judge Claiborne wrote the April 11, 1980 letter by hand, rather than giving it to you to type?

Ms. AHLSTROM. I don't know. He wrote things out by hand often enough that it wouldn't have been brought to my attention for any particular reason.

The CHAIRMAN. Could you speak up just a little bit? I couldn't hear that response.

Ms. AHLSTROM. I really couldn't—I've lost the question.

The CHAIRMAN. Why did he write it out by hand? Why did he not give it to you to type in the ordinary course of business?

Ms. **Ahlstrom**. I really don't know why he didn't have me type it. But it wasn't unusual for him to write things out occasionally. Plus, it's a short letter; it involved his own personal business.

I can't—that's an opinion.

The **Chairman**. Any further questions?

[No response.]

The **Chairman**. Mr. Goodman.

FURTHER REDIRECT EXAMINATION

Mr. **Goodman**. Thank you, Mr. Chairman.

Ms. Ahlstrom, I would like to call your attention to your testifying during the second trial with Judge Hoffman presiding.

Do you recall an incident in the middle of your testimony that took place which was unusual?

Ms. **Ahlstrom**. Oh! Are you talking about the recess—that same point in time that I was talking about——

Mr. **Goodman**. Would you please tell the committee about that?

Ms. **Ahlstrom**. During this time when I was being asked questions outside the presence of the jury, and then the jury would be in, at one point—and I don't know whether the jury was in or out at that stage—there was a recess taken, and as I left the stand, the Marshal grabbed me and told me I was not to speak to anyone during the recess, specifically Judge Claiborne and his attorneys.

Mr. **Goodman**. Do you know who else the Marshal grabbed?

Ms. **Ahlstrom**. Not from my own knowledge, no.

Mr. **Goodman**. Do you know whether or not there was an indication that Judge Claiborne's attorney would be held in contempt of court because of that incident?

Ms. **Ahlstrom**. Yes, I know that.

Mr. **Goodman**. Because Judge Claiborne's attorney was angry that he wasn't allowed to speak with you to calm you down; isn't that correct?

Ms. **Ahlstrom**. That's correct.

Mr. **Goodman**. Thank you.

The **Chairman**. Mr. Chabraja.

Mr. **Chabraja**. I have very few, Mr. Chairman.

RECROSS-EXAMINATION

Mr. **Chabraja**. Ms. Ahlstrom, you have testified that you were, I think "intimidated" was the word you used, by Judge Hoffman; is that right?

Ms. **Ahlstrom**. Yes.

Mr. **Chabraja**. And you were particularly disturbed because, at least in your mind, he suggested that you weren't telling the truth at those trials; is that right?

Ms. **Ahlstrom**. I felt that he was suggesting that, yes.

Mr. **Chabraja**. But he was wrong if that's what he was suggesting, isn't that correct?

Ms. **Ahlstrom**. Yes, he was wrong. I was testifying truthfully.

Mr. **Chabraja**. You took your oath seriously at those two trials, and you told the truth, didn't you?

Ms. **Ahlstrom**. I certainly did, to the best of my knowledge.

Mr. **Chabraja**. Thank you.

The **CHAIRMAN**. Ms. Ahlstrom, I'd like to go back one more time to the April 11 letter. In that April letter, there are some figures which we discussed a minute ago. There was a copy shown to you by Mr. Goodman in 1983; is that not right?

Ms. **AHLSTROM**. That's right.

The **CHAIRMAN**. Do you think that the figures that were in the copy shown to you in 1983 by Mr. Goodman were the same figures that were in the original which Judge Claiborne gave to you on April 11, 1980 and which you Xeroxed and folded and then delivered to Mrs. Wright?

Ms. **AHLSTROM**. It's my opinion that it is the same letter in its entirety.

The **CHAIRMAN**. The figures were the same?

Ms. **AHLSTROM**. It is my—yes, it is my opinion that they are the same.

The **CHAIRMAN**. That's your feeling?

Ms. **AHLSTROM**. My feeling.

The **CHAIRMAN**. No further questions.

The Senator from Virginia, Mr. Warner, would like you to look at both exhibit 17 and exhibit 36, which again is the April 11 letter. Noting that the handwriting in exhibit 17 is really print, printed, while the handwriting in exhibit 36, the April 11 letter, is script——

Ms. **AHLSTROM**. Yes.

The **CHAIRMAN**. Was that typical of Judge Claiborne to write in both manners?

Ms. **AHLSTROM**. It was typical of him to write in both manners in even one document; if he had written an order or decision rather than dictating, I would have both in there. He printed and he wrote.

The **CHAIRMAN**. And you can identify both as his regular handwriting, both as originating with Judge Claiborne?

Ms. **AHLSTROM**. Yes, sir. Those are his—that is his handwriting and his printing.

The **CHAIRMAN**. Just one more question. It goes over a point that we have already discussed. When you were typing the judicial ethics form, exhibit No. 16, you did not register any surprise that that figure of $23,050.76 was different than the figure that you had seen on April 11, of $41,073?

Ms. **AHLSTROM**. No, it didn't register with me. My job was not involved with his financial things, except as to things like this, and I was really pretty occupied with other stuff, other things in the office, that I was more concerned about getting completed than to have this take my attention.

The **CHAIRMAN**. No further questions.

How about counsel? Do you want Ms. Ahlstrom to remain, or do you want to excuse her?

Mr. **GOODMAN**. I would excuse her from the proceeding.

Mr. **CHABRAJA**. I would excuse her.

The **CHAIRMAN**. Ms. Ahlstrom, you are excused.

Ms. **AHLSTROM**. Thank you.

The **CHAIRMAN**. Thank you for being with us.

[Whereupon, the witness was excused.]

The CHAIRMAN. Let me ask counsel if they see any further requirement for testimony from Mr. Swanson?

Mr. GOODMAN. Mr. Chairman, on behalf of Judge Claiborne, we would excuse him from his subpoena.

The CHAIRMAN. How about the managers?

Mr. CHABRAJA. We would excuse Mr. Swanson.

The CHAIRMAN. Does any member of the committee have any questions about keeping Mr. Swanson?

[No response.]

The CHAIRMAN. Then at this time, we will also excuse Mr. Swanson.

[Whereupon, the witness was excused.]

The CHAIRMAN. Will you call your next witness, Mr. Goodman?

Mr. GOODMAN. I do have one other matter of business concerning the subpoenas, Mr. Chairman.

A subpoena was authorized for a Ginny McIlwaine. We chose not to call her. We feel that her testimony would be cumulative. At the time we were requested to provide our list of witnesses for subpoena purposes, as I indicated on a prior occasion, I put down everybody that I could dream of who might have something to offer to these proceedings. We made the determination that Ms. McIlwaine's testimony is not relevant and material at this point in time, and we would like the subpoena to be honored, but her to be excused from the subpoena, if the House has no objection.

The CHAIRMAN. Let me advise you on that at the noon break.

Mr. GOODMAN. Thank you.

The CHAIRMAN. Who is your next witness?

Mr. GOODMAN. Jerry Watson.

The CHAIRMAN. Mr. Watson, will you raise your right hand. Do you swear that the testimony you are about to give in this impeachment proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. WATSON. I do.

The CHAIRMAN. You may proceed.

DIRECT EXAMINATION

Mr. GOODMAN. Mr. Watson, please state your full name and spell your last name for the record.

Mr. WATSON. My name is Jerry D. Watson. My last name is spelled W-a-t-s-o-n.

Mr. GOODMAN. Mr. Watson, where do you reside?

Mr. WATSON. Clark County, NV, the city of Henderson.

Mr. GOODMAN. How old are you?

Mr. WATSON. Fifty-one.

Mr. GOODMAN. How long have you lived in Las Vegas, NV?

Mr. WATSON. Since 1971.

Mr. GOODMAN. Where did you come from before you lived in Nevada?

Mr. WATSON. Denver, CO.

Mr. GOODMAN. Mr. Watson, would you please tell the committee your formal educational background?

Mr. WATSON. I am a high school graduate. I graduated from the American College of Life Underwriters in Bryn Mawr, PA. I attended Altus Junior College, and I have attended a host of other educational and training institutions.

I hold a designation as a National Association of Securities Dealers agent. I hold a real estate broker's license. I am an appraiser. I am appointed by the Department of Housing and Urban Development and the Veterans' Administration as a foreclosure appraiser.

I manage approximately 300 properties between the Veterans' Administration and Housing and Urban Development.

I have been self-employed since 1977 in the city of Las Vegas. My businesses consist of an accounting and consulting company; a real estate brokerage; an appraisal company, and my firm does tax returns and bookkeeping for small- and medium-sized businesses.

I have participated in government activities in Las Vegas. I have been affiliated with various civic organizations, religious groups and other charitable organizations, holding executive offices in all of them.

I was at one time on the board or as an advisory committee to the State Insurance Commission. I helped institute some legislation in Nevada that tightened up the insurance laws rather severely. I have been an active participant in, as I said, community and government affairs in Las Vegas since living there.

Mr. GOODMAN. All right. Now, what is your primary means of making a living?

Mr. WATSON. Well, Mr. Goodman, it comes from approximately four companies; the tax planning and accounting business, it varies from year to year. As a matter of fact, this year, the larger portion of my income has been derived from the appraisal of properties.

Mr. GOODMAN. Well, let me ask you this. In 1981, how were you employed?

Mr. WATSON. In 1981, the larger share of my income was generated from the accounting and consulting business.

Mr. GOODMAN. What was the name of the accounting business?

Mr. WATSON. Creative tax and business planning.

Mr. GOODMAN. Did you have a partner?

Mr. WATSON. Yes, I did, in 1981.

Mr. GOODMAN. What was your partner's name?

Mr. WATSON. Her name was Linda Lamb.

Mr. GOODMAN. Did you hold yourself out to the public as a partnership?

Mr. WATSON. We were a corporation, but as you can appreciate, the public saw us as partners.

Mr. GOODMAN. What was the name of that corporation?

Mr. WATSON. That incorporation still exists, and it is three initials. They are: J.J.J.

Mr. GOODMAN. Did you ever hold yourself out as Lamb & Watson?

Mr. WATSON. Yes, we did.

Mr. GOODMAN. Did you use Lamb & Watson when you were preparing tax returns?

Mr. WATSON. That's correct.

Mr. GOODMAN. Did you have a staff at your office?

Mr. WATSON. Yes, I did.

Mr. GOODMAN. Where was your office located?

Mr. WATSON. 1700 East Desert Inn Road, suite 412, in the city of Las Vegas.

Mr. GOODMAN. Could you describe the building?

Mr. WATSON. The building is a white slump-stone building with a dark gray French mansard roof.

Mr. GOODMAN. Could you describe your office situation?

Mr. WATSON. My office situation is approximately 1,000 square feet. You enter into a receptionist area, and there is a hallway that divides the property. Off of that hallway are three offices, and in the rear, the end of the hallway, is one very large room.

Mr. GOODMAN. All right. And did you have any staff working for you at the time?

Mr. WATSON. Yes, I did.

Mr. GOODMAN. Now I am referring you to 1981.

Mr. WATSON. That's correct.

Mr. GOODMAN. All right. Who was working for you at those premises?

Mr. WATSON. Charlotte Travaglia was handling the accounting and the tax preparation, and—I am sorry, I cannot remember what my receptionist's name was at the time——

Mr. GOODMAN. You had a receptionist?

Mr. WATSON. Yes, I did.

Mr. GOODMAN. Was your partner there, as well?

Mr. WATSON. Yes.

Mr. GOODMAN. And yourself?

Mr. WATSON. Yes.

Mr. GOODMAN. So it was a staff of four, including yourself?

Mr. WATSON. That's correct.

Mr. GOODMAN. All right. Who occupied the master office?

Mr. WATSON. The first office, or the——

Mr. GOODMAN. No; The office which would be the biggest office.

Mr. WATSON. I did.

Mr. GOODMAN. All right. And what did you have in the office; could you describe it generally?

Mr. WATSON. Generally, I had primarily books on one wall; a desk in the center; I believe, three chairs, a small table, and certain wall decorations.

Mr. GOODMAN. All right. Do you know Harry E. Claiborne?

Mr. WATSON. Yes, I do.

Mr. GOODMAN. When did you first formally meet Judge Claiborne?

Mr. WATSON. I must have met Judge Claiborne—the first time I met him, I cannot remember whether it was at the Kiwanis Club or at the Baptist church. But I know I met him very early on after arriving in Las Vegas, and you know, saw him from time to time through my connections with the city.

Mr. GOODMAN. Did you meet him in a professional capacity at any point in time?

Mr. WATSON. Yes, I did.

Mr. GOODMAN. Do you know whether or not, of your own knowledge, whether your office was handling the tax matters of anybody close to Judge Claiborne?

Mr. WATSON. Yes, we were.

Mr. GOODMAN. And who was that?

Mr. WATSON. That was Judge Claiborne's wife at the time, Mrs. Reis.

Mr. GOODMAN. What was your office doing for Norma Reis?

Mr. WATSON. We did her income tax returns—and I believe we also did her children's.

Mr. GOODMAN. All right. And was that before Judge Claiborne came to you for purposes of consultation regarding preparation of taxes?

Mr. WATSON. That is correct.

Mr. GOODMAN. Can you recall the first time that Judge Claiborne came to your office?

Mr. WATSON. Not the exact date, but I recall he came to my office in the spring of 1981 to consult about his 1980 tax return.

Mr. GOODMAN. All right. Did he come with anybody?

Mr. WATSON. No; he came alone.

Mr. GOODMAN. Did you in fact discuss tax preparation with him in the spring of 1981?

Mr. WATSON. Yes, we did. In specifics, he had a question relative to the sale and exchange of his personal residence.

Mr. GOODMAN. Did you offer your judgment and advice to him?

Mr. WATSON. Yes, I did.

Mr. GOODMAN. Did you request him to do anything?

Mr. WATSON. At the time, I did not think the judge needed anything from me except some advice about the sale and exchange of his personal property.

As it later turned out in the discussion, he decided to have us prepare the complete return, at which time I began to counsel him about those factors I would need in order to accurately do the tax return. The bulk of my meeting centered around the sale and exchange of the property, since he had owned it for many, many years and had sold it for a substantial amount of money, and had made extensive improvements and additions to the properties over the 25 or 30 years that he had owned it. So that was my major concern, was what did you spend on the property after you purchased it to enhance it enough to sell it for the amount of money you got for it.

Mr. GOODMAN. All right. And did you ask Judge Claiborne to prepare any documentation for you?

Mr. WATSON. Yes, I did.

Mr. GOODMAN. What did you ask him to do?

Mr. WATSON. I asked Judge Claiborne—I gave him a form—well, I can't say that I recall that for sure, whether I gave him the form or subsequently mailed it to him. But nonetheless, I put in his possession a form on which you list the various items that the Internal Revenue Service allows you to use to adjust the basis when you are selling your personal residence.

As I said, it was quite extensive.

Mr. GOODMAN. All right. And did you receive anything back from Judge Claiborne after this initial meeting?

Mr. WATSON. Yes, we did. We received a substantial amount of documents, substantiating the money he had spent. And I remember specifically that he told me that, "These records constitute only the money I paid to general contractors for which I have checks as receipts," by no means implying that this was the total amount of money that he had expended on the property.

And I explained to him that, "To be on the safe side, let's just stick with what you have."

Mr. GOODMAN. Did at any time you receive from him yellow legal sheets of paper?

Mr. WATSON. Yes, I did.

Mr. GOODMAN. When was that?

Mr. WATSON. Early on in our conversation, he communicated with me primarily on yellow legal pads, mostly—well, all of them were handwritten that I saw.

Mr. GOODMAN. Did there come a time that he provided you with documentation on the yellow pieces of paper concerning income earned which should be reported on his 1980 tax return?

Mr. WATSON. Yes, he did.

Mr. GOODMAN. And what did you do with those yellow pieces of paper when you received them?

Mr. WATSON. As our practice is, we start a folder as soon as the client comes into the office, and those documents were accumulated in that folder until such time as we were ready to prepare the tax return.

Judge Claiborne is not unique in the way he handles his taxes. I have a number of clients who do the same thing. They start bringing me paperwork sometime in January, and sometimes by June, they are still bringing me additional paperwork of items that they have forgotten, or additional statements that they received, in particular, the 1099's and entry statements. Although you are supposed to have them by the end of January, many companies do not actually get those to you until March or later.

So we establish the file, because I know we are not going to get all the information that we want at any one time. It usually takes a month or two to accumulate that, as was the case with Judge Claiborne.

Mr. GOODMAN. Mr. Watson, I am going to ask you to look at the thinner of those two documents you have in front of you and turn to item No. 10.

For the House's consideration, that is the respondent's exhibit file, because there are two 10's; the House has a 10, and the respondent has a 10 in this particular instance.

The CHAIRMAN. This is the thin file?

Mr. GOODMAN. This is the thin file.

Would you please peruse through exhibit No. 10, and I will have a question or two to ask you about that.

Do you recognize that particular proposed exhibit?

Mr. WATSON. Yes, I do.

Mr. GOODMAN. Would you tell the committee what it is?

Mr. WATSON. This is the yellow document I referred to earlier which was part of the information that Judge Claiborne brought to the office. This included a statement of his income for the year 1980, in addition to the deductions he had in 1980, and then of course, as we previously spoke, there is an extensive list of expenses he had in remodeling his home.

Mr. GOODMAN. Mr. Watson, what was the original color of the items which are depicted in exhibit No. 10?

Mr. WATSON. Yellow.

Mr. GOODMAN. All right. And after you received that, did you turn proposed exhibit No. 10 over to anybody so they could work on Judge Claiborne's 1980 tax return?

Mr. WATSON. Yes, I did.

Mr. GOODMAN. To whom did you turn the documents?

Mr. WATSON. Charlotte Travaglia.

Mr. GOODMAN. Did you give her any instructions regarding it?

Mr. WATSON. Not that I recall any specific instructions. She is a qualified and competent tax preparer, and there was not much instruction to give her. What was stated here was stated here.

Mr. GOODMAN. I am going to ask you now to turn to exhibit No. 27 in the larger of the two folders, and ask whether or not you recognize that particular document after reviewing it.

Mr. WATSON. Yes, I do.

Mr. GOODMAN. What is that document?

Mr. WATSON. That is Judge Claiborne's 1980 tax return.

Mr. GOODMAN. And who prepared it?

Mr. WATSON. Charlotte Travaglia.

Mr. GOODMAN. Does it bear your name on any portion of it?

Mr. WATSON. Yes.

Mr. GOODMAN. Where is your name?

Mr. WATSON. Yes, it does. It is on the 1040; my name is written on the return as the preparer. I believe I signed this one.

Mr. GOODMAN. Mr. Watson, can you recall whether the return was done in pencil?

Mr. WATSON. Yes, it was.

Mr. GOODMAN. The entire return, with the exception of the signatures and certain information for IRS use on the first page; is that correct?

Mr. WATSON. All tax returns prepared in my office are prepared in pencil.

Mr. GOODMAN. Now, do you know whether or not that tax return was filed?

Mr. WATSON. I have every reason to believe it was.

Mr. GOODMAN. After it was filed, did you have the occasion to speak to Judge Claiborne about a refund?

Mr. WATSON. Not—do you mean—let me ask you to clarify the question. In the course of tax preparation, the subject of refunds comes up. I do not remember any extraordinary discussion with Judge Claiborne about a refund. I believe he was to get a refund, and in the course of my usual business, if you are going to get a refund, I usually tell you you are going to get a refund.

Mr. GOODMAN. Do you know whether or not Judge Claiborne, or can you recall whether Judge Claiborne came to you and had a discussion concerning the refund which he received?

Mr. WATSON. I do not recall that.

Mr. GOODMAN. Do you recall telling Judge Claiborne at any point in time——

Mr. CHABRAJA. Objection. Leading, before he gets it out of his——

The CHAIRMAN. Mr. Watson, would you speak directly into the microphone?

Mr. WATSON. Sure.

Mr. CHABRAJA. Mr. Goodman was about to suggest to the witness, Mr. Chairman. This is a critical area, and I don't think he should be permitted to do that.

The CHAIRMAN. I think, Mr. Goodman, that you can do a little better in laying the kind of——

Mr. GOODMAN. All right. Did there come a time that you had a discussion with Judge Claiborne after the return was filed by you?

Mr. WATSON. Yes; I have had discussions after that return was filed.

Mr. GOODMAN. Did you have any discussion with Judge Claiborne which pertained to the way the return was prepared?

Mr. WATSON. Not extensive.

Mr. GOODMAN. Did you have any discussion with Judge Claiborne about the way the return was prepared?

Mr. WATSON. I am sure we did, Mr. Goodman.

Mr. GOODMAN. Do you recall whether or not you told Judge Claiborne that you discussed the appropriateness of the way the return was prepared?

Mr. WATSON. I am sure I did.

Mr. GOODMAN. Do you recall telling Judge Claiborne that you had checked with people, that the return was prepared properly?

Mr. WATSON. That is correct.

Mr. GOODMAN. Now, what did you tell Judge Claiborne?

Mr. WATSON. I told Judge Claiborne that this return, in my opinion, was prepared correctly.

Mr. GOODMAN. Did you tell him why? Did you tell him why?

Mr. WATSON. Why I thought it was prepared correctly?

Mr. GOODMAN. Yes.

Mr. WATSON. Well, because it was, first of all, my opinion. The person who prepared my return, to the best of my knowledge, was quite competent, and I would frequently discuss the preparation of tax returns with people for an additional opinion.

Mr. GOODMAN. OK. Now, with whom did you tell Judge Claiborne, if anyone, you discussed the preparation of the tax return? Do you understand my question?

Mr. WATSON. I discussed the preparation of this tax return with any number of people. I even discussed it with a couple of IRS agents.

Mr. GOODMAN. Fine, and did you tell Judge Claiborne that?

Mr. WATSON. I can't recall that I did or I did not. I would not be surprised if I did.

Mr. GOODMAN. Well, if you did, what would you have told him?

Mr. WATSON. I would have told him that I had discussed——

Mr. CHABRAJA. Objection, Mr. Chairman. That is incompetent—"If you did, what would you have told him?"

The CHAIRMAN. Can you——

Mr. GOODMAN. I'll do a little better. [Laughter.]

All right. I will try to do a lot better.

Mr. Watson, did you in fact discuss the return with IRS agents?

Mr. WATSON. Yes, I did.

Mr. GOODMAN. What were their names?

Mr. WATSON. Noriko Lowe and Ed White.

Mr. GOODMAN. And by whom were they—with what office were they employed?

Mr. Watson. They were in the Las Vegas office. One was in the Office of Special Collections, and the other one was in the Office of Field Audit.

Mr. Goodman. Did you tell Judge Claiborne that you had such a discussion with them?

Mr. Watson. Yes, I did.

Mr. Goodman. OK. When did you have such a discussion with Judge Claiborne about that?

Mr. Watson. I cannot recall the exact time. The sequence of events—it was sometime after the preparation of the tax return. As a matter of fact, I believe I discussed it with the Internal Revenue Service agents shortly after I was interrogated by the grand jury in Portland, OR.

Mr. Goodman. Now let us go on to the interrogation. When were you first notified that governmental agents wanted to speak to you about Judge Claiborne's tax return for 1980?

Mr. Watson. I believe it was in March of 1982 or 1983.

Mr. Goodman. 1982 or 1983?

Mr. Watson. I cannot recall, to be honest with you, which year that was, but it was in March, and it was prior to the time of the Portland grand jury which, of course, is a matter of record.

Mr. Goodman. All right. And what was your first contact with either an IRS agent or an FBI agent?

Mr. Watson. I was approached in my office by a gentleman identifying himself as from the Criminal Investigation Division of the Internal Revenue Service, and a gentleman who identified himself as an FBI agent.

Mr. Goodman. Do you recall their names?

Mr. Watson. Yes, I do.

Mr. Goodman. What were their names?

Mr. Watson. Donald Skelton was with the Internal Revenue Service, and Rick Gessinger was with the FBI.

Mr. Goodman. What did they say to you?

Mr. Watson. The general conversation had to do with Judge Claiborne and the fact that they were investigating him for accepting a bribe from Joe Conforte. There was not a particular implication that there was any impropriety with the tax return. They asked me the details about how well I had known the Judge, and how I had come to do the return, and they wanted some basic information about the return, which I told them, I said, "You've got the tax return in your possession."

They informed me that they would be back. We had a very brief discussion, as I recall, the first day—a rather friendly discussion, as I recall.

Mr. Goodman. All right. When was the next time that you had a conversation with them?

Mr. Watson. It was very shortly thereafter. It may have been as early as the next day.

Mr. Goodman. Where did it take place?

Mr. Watson. In my office.

Mr. Goodman. Who was present?

Mr. Watson. In my office, my entire staff was there, but just in my office were the two Government agents and myself.

Mr. Goodman. And what took place?

Mr. WATSON. They became a little bit more insistent and were considerably less friendly. What they told me was that they were officers of the grand jury, in addition to being an IRS officer and an FBI agent, and they demanded that I turn over to them the records that had been subpoenaed by the grand jury in Portland.

Mr. GOODMAN. What did you do after the demand was made?

Mr. WATSON. I refused.

Mr. GOODMAN. Then what happened?

Mr. WATSON. They began to ask me why I was refusing. They implied that I had some interest in protecting Judge Claiborne—from what, I didn't know.

I thought that the meeting was particularly abusive. I had at least a minimal enough knowledge of the law to understand that there are no such things as officers of the grand jury, and they had no jurisdiction in my office, and they had no right to come and make any demands on my records.

My records had been subpoenaed, and I was perfectly willing to deliver them to the proper authority—the grand jury in Portland, OR.

Mr. GOODMAN. Then what happened next?

Mr. WATSON. I appeared before the grand jury in Portland, OR.

Mr. GOODMAN. Did you testify?

Mr. WATSON. Yes, I did.

Mr. GOODMAN. Was there any incident relating to that testimony?

Mr. WATSON. I thought that they went out of their way to attempt to intimidate me.

Mr. GOODMAN. How?

Mr. WATSON. They separated me——

Mr. GOODMAN. Excuse me. Let me lay a foundation.

Where were you?

Mr. WATSON. In a Federal office building.

Mr. GOODMAN. In what city?

Mr. WATSON. Portland, OR.

Mr. GOODMAN. Who was present?

Mr. WATSON. At the time, my business associate, Mrs. Lamb; I can remember a lawyer from Las Vegas by the name of Mr. Wright——

Mr. GOODMAN. Is that Richard Wright?

Mr. WATSON [continuing]. Richard Wright—Mr. Binion was there.

Mr. GOODMAN. Do you know Mr. Binion's first name?

Mr. WATSON. I believe it was Ted. To be honest, I'm not sure. It is either Ted or Jack.

There was an attorney from New York City whom I did not know, and I believe another gentleman was in the witness waiting room, where I reported.

Mr. GOODMAN. And what happened?

Mr. WATSON. I was shortly separated from the rest of the witnesses.

Mr. GOODMAN. By whom?

Mr. WATSON. By Mr. Jesinger.

Mr. GOODMAN. And Mr. Jesinger was whom?

Mr. WATSON. I beg your pardon.

Mr. GOODMAN. Who was Mr. Jesinger?

Mr. WATSON. I am sorry. Not Mr. Jesinger—Mr. Skelton.

Mr. GOODMAN. Who was Mr. Skelton?

Mr. WATSON. Mr. Skelton is a Criminal Investigation Division IRS officer, and he then provided me with a tour of the building. He moved me through three or four different rooms.

I had in my possession some of Judge Claiborne's records that were not of any particular significance, but since they were his, I wanted to either return them or a copy, and I had not made a copy prior to leaving the office because I did not know I had them. I asked if I could be allowed to make copies of those documents, and they said, "Oh, of course you can."

So they moved me into what looked like a storage room, with a very antiquated copy device, and they allowed me to start copying. And as I proceeded to do this, about the time I would finish one copy, there would be some girl come in and say, "I have to use the copy machine." So I was continually interrupted.

And I finally just told him, I said, "Look, the records are of no particular significance. I'll just give them to you, and we'll forget about the copies."

Mr. GOODMAN. All right. Did you go in and testify in front of the grand jury?

Mr. WATSON. Yes; I did.

Mr. GOODMAN. Was there anything unique about that situation?

Mr. WATSON. Not in particular. As I reflect back on that, I couldn't figure out what they were attempting to get out of me or what they were trying to prove. The questions were centered around an alleged bribery. The amount of money that was discussed was $40,000, as I recall. And they seemed to—Mr. Shaw, who was the Government's prosecutor, seemed to imply that I had something to do with the bribe, or was in some way retained to cover up the money.

Mr. GOODMAN. After you appeared before the grand jury and testified, what happened? Did you return to Las Vegas?

Mr. WATSON. I returned to Las Vegas.

Mr. GOODMAN. When was the next time that you met with any representatives of the Government?

Mr. WATSON. It was shortly before being called to the grand jury, the second grand jury, that convened in Reno.

Mr. GOODMAN. Were you served with a subpoena?

Mr. WATSON. Yes; I was.

Mr. GOODMAN. Where were you served with a subpoena?

Mr. WATSON. In my office.

Mr. GOODMAN. Who served you?

Mr. WATSON. I don't recall.

Mr. GOODMAN. Was there anything unusual about that occurrence?

Mr. WATSON. Nothing about the service. I believe it was a U.S. marshall.

Mr. GOODMAN. All right. When is the next time you had any meeting with any Federal official?

Mr. WATSON. Prior to that—let's see—I had Mr. Gessinger—I've got rather complete notes on that, but I don't have them with me, but it is the best of my recollection, I had a meeting with Mr. Jesinger and Mr.——

Mr. GOODMAN. Mr. Skelton?

Mr. WATSON [continuing]. Skelton. They came to my office.

Mr. GOODMAN. Who else was present?

Mr. WATSON. Well, just myself. And Mr. Skelton and Mr. Halper also came to my office.

Mr. GOODMAN. Who is Mr. Halper?

Mr. WATSON. Mr. Halper is another Criminal Investigation Division officer of the Internal Revenue Service.

Mr. GOODMAN. What happened when Mr. Halper and Mr. Skelton came to your office?

Mr. WATSON. Each time they came to my office, they became a little more disenchanted with me, I suppose. Their demeanor seemed to deteriorate. Usually, one of the people would kind of act friendly; the other one would make more pointed or jabbing remarks. In particular, I remember them telling me that I was being made a fool of; that I was sticking my neck out—or, "going out on a limb," I believe was the phraseology they used—and that the end result would be that Judge Claiborne would saw that limb off for me.

This is the course of general conversation, as I recall. These occurred at least on one or two occasions that I can recall, prior to testifying before the first grand jury in Reno.

Mr. GOODMAN. Did there come a time, Mr. Watson, that you sent a telegram to the foreman of a grand jury?

Mr. WATSON. Yes; I did.

Mr. GOODMAN. When did that take place?

Mr. WATSON. It was within a few days after I had testified.

Mr. GOODMAN. At which grand jury?

Mr. WATSON. The Reno grand jury.

Mr. GOODMAN. OK, the second grand jury appearance that you have told us about?

Mr. WATSON. That's correct.

Mr. GOODMAN. All right. And what caused the sending of the telegram?

Mr. WATSON. My poor memory.

Mr. GOODMAN. Excuse me? Say it again, please.

Mr. WATSON. My poor memory. When I testified before the Reno grand jury, as I have tried to explain, I had not been feeling well. This began to wear heavily on my mind, because I did not feel that these gentlemen were operating truthfully and up front with me, in particular reference to their denial that they were going to make me a target of the grand jury.

Mr. GOODMAN. How did that come about?

Mr. WATSON. I asked them on each occasion, "Am I now, or do you plan to make me a target of the grand jury, and am I under criminal investigation?" and they always responded negatively.

I grew to the point that I didn't believe that. So, needless to say, I didn't sleep a great deal the night before I appeared before that grand jury in Reno. As a matter of fact, I was so late getting to the airport that I abandoned my car to rush to the plane. I didn't arrive to the grand jury in what I would consider very good condition to testify. And Mr. Shaw was a good deal better prepared for me in the Reno grand jury than he had been in the Portland grand jury, and he pretty well beat me to death in that room.

Mr. GOODMAN. All right. And you testified in front of the grand jury, did you not?

Mr. WATSON. Yes; I did.

Mr. GOODMAN. And then, after returning to Las Vegas, what took place?

Mr. WATSON. I immediately—well, I reported to Judge Claiborne, I believe, the next day, as I had tried to keep him informed, as I would any client, as to what was going on with his business and what I had an involvement in. And I met Judge Claiborne in his office and explained to him that they were continuing—that I thought they were trying to show that he was doing something illegal on the bench, like practicing law while he was a lawyer, because their entire conversations centered around either bribes or money that he was earning in legal fees.

So, I went over what I could remember of my testimony. I had not reviewed my file, because I did not have the papers that disclosed his income, that you referred to as exhibit 10, were not in my possession. So I had no reason to review those. I didn't understand what they were asking about. So, when they kept pounding me on the briberies and different amounts of money and his earning legal fees, combined with my distressed state at the time, the $88,000 was never testified to.

I don't believe I was ever asked about $88,000 in the Reno grand jury.

Mr. GOODMAN. Now, what do you mean when you talk about the $88,000?

Mr. WATSON. I am sorry. It is $88,500. And the $88,500 is the amount of money that Judge Claiborne had collected for legal services he performed prior to going on the bench, which I referred to as "accounts receivable"——

Mr. GOODMAN. One second, now. Did you have that knowledge within your possession, in your mental possession, at the time that you testified in front of the grand jury?

Mr. WATSON. If it was in my mental possession, I didn't recall it.

Mr. GOODMAN. Did you have it in your physical possession as far as your office was concerned?

Mr. WATSON. It was not in my physical possession.

Mr. GOODMAN. Did your office have documents which reflected that the judge received $88,500?

Mr. WATSON. No; we did not.

Mr. GOODMAN. How about exhibit No. 10?

Mr. WATSON. Exhibit No. 10 had been returned to Judge Claiborne.

Mr. GOODMAN. All right. Had it been given to you initially, though?

Mr. WATSON. It was given to us initially.

Mr. GOODMAN. And you had seen the $88,500 figure?

Mr. WATSON. Yes; I had.

Mr. GOODMAN. It had been provided to you by Judge Claiborne?

Mr. WATSON. That is correct.

Mr. GOODMAN. But you failed to tell the grand jury about it?

Mr. WATSON. That is correct.

Mr. GOODMAN. When you returned from the grand jury you got in touch with Judge Claiborne?

Mr. WATSON. That is correct.

Mr. GOODMAN. How did you contact him?

Mr. WATSON. I contacted him by phone, arranged to meet him in his office. I went down, and as I recall, it was late in the afternoon; his business was concluded. I told him what happened, and Judge Claiborne said to me, "I think you have just gotten me indicted."

Mr. GOODMAN. That's what Judge Claiborne said to you?

Mr. WATSON. That's what he said to me. And it had to do with the $88,500.

Mr. GOODMAN. After he said that, "I think you just got me indicted," was that as a result of your telling him that you did not tell the grand jury about that figure?

Mr. WATSON. That is correct.

Mr. GOODMAN. What did you then do to rectify the situation?

Mr. WATSON. Well, the first thing we did is, since neither one of us had documents in our possession, we went to his house where the documents were, and we went through the paperwork that he had accumulated on, I believe, his dining room table, or desk, and he found the yellow documents that had included that amount of income on them.

Mr. GOODMAN. Then that would be what has been referred to as——

Mr. WATSON. Exhibit 10.

Mr. GOODMAN. After you reviewed that, what took place?

Mr. WATSON. Well, after I recovered from almost a seizure or shock, I told the judge that I had made a horrible mistake, and I would do what I could to rectify it. And I didn't feel it was appropriate to ask him for his advice, so I went home and called my attorney.

Mr. GOODMAN. Who was your attorney?

Mr. WATSON. The attorney that I spoke to was Neil Slocum.

Mr. GOODMAN. Where does he practice?

Mr. WATSON. He practices in Las Vegas.

Mr. GOODMAN. As a result of having your discussion with Neil Slocum, what did you do, if anything?

Mr. WATSON. He told me that due to the urgency of the matter, since he felt the grand jury's business was about to come to an end, there was not time for me to submit an affidavit—at least, he didn't think so—so he suggested that I send telegrams. And I detailed out a telegram that I sent to the grand jury foreman and to Mr. Steven Shaw.

Mr. GOODMAN. Could you characterize the substance of the telegram?

Mr. WATSON. The substance was I told them I made a serious mistake; Judge Claiborne did in fact report to our firm that he received $88,000 that he earned prior to his appointment, and he received after his appointment.

Mr. GOODMAN. After you sent the telegram, what took place?

Mr. WATSON. I believe the same day that he received the telegram was when I received another visit from, I believe it was Mr. Jesinger and Mr. Leo Halper.

Mr. GOODMAN. Mr. Halper is employed by whom?

Mr. WATSON. He is also Criminal Investigation, Internal Revenue Service.

Mr. GOODMAN. Where did they meet with you?

Mr. WATSON. They came to my office.

Mr. GOODMAN. Did they have an appointment?

Mr. WATSON. No, they didn't.

Mr. GOODMAN. What took place when they arrived?

Mr. WATSON. They arrived about 15 minutes after 5, when everyone was gone but me. And I don't believe I have ever seen two men anymore upset than Mr. Halper and Mr. Jensinger was about the fact that I sent that telegram.

Mr. GOODMAN. What did they say to you, if anything?

Mr. WATSON. Mr. Halper was particularly abusive. I believe in your remarks Tuesday, you fairly well characterized the remarks that Mr. Leo Halper made to me.

Mr. GOODMAN. I wasn't testifying, and I wasn't under oath.

Tell the committee what he said to you, please.

Mr. WATSON. He said to me, "You"—to the effect, "You are a smart S.O.B., and you sure think you know how to cover your rear end"—or words to that effect—and reiterated to me again that sticking my neck out for this judge, or "going out on a limb" I believe was their characteristic phrase, I would be very sorry for my behavior.

Mr. GOODMAN. After he said that to you, what did you do, if anything?

Mr. WATSON. Well, I am glad—I believe that they left very shortly after that. I don't even know what the purpose of the meeting was, other than just to come over there and pound on me one more time.

Mr. GOODMAN. What was the next thing that happened?

Mr. WATSON. I was resubpoenaed by the grand jury.

Mr. GOODMAN. Which grand jury is this? Where was it sitting?

Mr. WATSON. In Reno, NV.

Mr. GOODMAN. Who subpoenaed you?

Mr. WATSON. Mr. Shaw.

Mr. GOODMAN. Pursuant to the subpoena, what did you do, if anything?

Mr. WATSON. I can't recall anything specific—oh, well, yes—well, there was one sort of specific thing. After this extended involvement with this group of people, I retained an attorney in Reno.

Mr. GOODMAN. Who was the attorney—pardon me.

Mr. WATSON. I had an attorney in Las Vegas, but I felt that it would be a little less expensive if I got someone in Reno, and I hired Lawrence Semenza.

Mr. GOODMAN. Did Mr. Semenza accompany you for your grand jury appearance?

Mr. WATSON. Yes, he did.

Mr. GOODMAN. Did Mr. Semenza and you go to the Federal Building in Reno, NV?

Mr. WATSON. Yes, we did.

Mr. GOODMAN. What took place when you arrived at the Federal Building?

Mr. WATSON. We were—let's see—Mr. Semenza had some business with the court. I believe he stopped off in one of the judge's offices. And we went to the designated area for grand jury witnesses to wait. And we waited, it seems to me, about an hour, an hour and a half.

Mr. GOODMAN. Then what happened?

Mr. WATSON. Mr. Shaw, Mr. Jesinger, Mr. Halper, and Mr. Skelton came out of the grand jury room, as I remember, and met Mr. Semenza and I, where we engaged in a brief discussion about my testimony. The discussion had centered around I had requested that they give me an opportunity to review my prior grand jury testimony. Again, I felt that things were getting pretty sticky for me.

So we asked for that, and Mr. Shaw and Mr. Semenza began to discuss the possibilities of doing that. It was a rather extensive document. Mr. Shaw suggested that we could read this over lunch. Mr. Semenza suggested it would take a little more time than that, and asked for a little more time.

Suddenly—and it seemed to me that one of them said something to Shaw——

Mr. GOODMAN. One of whom?

Mr. WATSON [continuing]. One of the gentlemen that was with him—it seems to me there was some whispered conversation, and all of a sudden Mr. Shaw said, "You can forget it"—he had extended the documents toward Mr. Semenza; he pulled the documents back and said, "You can forget it, and you can advise your client that he is a target of this grand jury."

Mr. GOODMAN. I have no further questions.

The CHAIRMAN. Mr. Chabraja?

Mr. CHABRAJA. Mr. Chairman, I have rather extensive cross. If I could have 5 minutes to get together and caucus with my colleagues, and then I can proceed straight through and finish by the noon hour.

The CHAIRMAN. Yes. Are there any questions at this point from members of the committee?

[Pause.]

The CHAIRMAN. Mr. Watson, the Senator from Arkansas, Mr. Pryor, asks you this question: Judge Claiborne gave you pages from a yellow legal pad?

Mr. WATSON. That is correct.

The CHAIRMAN. That is exhibit No. 10.

Did you make a copy of these pages for Judge Claiborne's files?

Mr. WATSON. No, I did not.

The CHAIRMAN. Under what circumstances did you give up possession of these notes, which are now exhibit 10, after they had been given to you by Judge Claiborne?

Mr. WATSON. Mr. Chairman, just for purposes of clarification, let me say this. I don't retain copies of any clients 'records in my office for any extended period of time. First of all, it would become a storage problem, and second, I don't need them; they do. So we don't copy information such as this routinely, or any other records that you might give us. We put them into the file; we prepare the tax return; shortly thereafter, we return the documents to you. The copies I retain in my office are copies of my own work.

The CHAIRMAN. The Senator from Arizona, Mr. DeConcini, asks this question: Who prepared tax returns?

Mr. **Watson**. Who prepared tax returns in my office?

The **Chairman**. Yes.

Mr. **Watson**. Primarily one of the people employed by me.

The **Chairman**. Specifically Judge Claiborne's tax return?

Mr. **Watson**. That tax return was specifically prepared by Ms. Charlotte Travaglia, with the exception of a few calculations made by me on the sale and exchange of the personal residence.

The **Chairman**. Did you review and concur with the work that Ms. Travaglia did on Judge Claiborne's return?

Mr. **Watson**. I reviewed this tax return no more seriously or spent any more time on it than I review any others. I don't as a general rule review or redo the tax return. I trust the person who I am hiring as competent to do it. So my review of this would have simply been to look at it.

The **Chairman**. Now, was all of the information which was reflected on the tax return given to you by Judge Claiborne?

Mr. **Watson**. As far as I know, it was.

The **Chairman**. Was there any information included there that came from any other source?

Mr. **Watson**. Well, I'm not sure. I don't—I can't imagine that there would have. I would have to say generally speaking, the information on the tax return would have come exclusively from the taxpayer.

The **Chairman**. Now, what precisely did Judge Claiborne give you?

Mr. **Watson**. Judge Claiborne gave us the yellow pad——

The **Chairman**. That's exhibit No. 10.

Mr. **Watson** [continuing]. No. 10—which I believe consisted of several pages. In addition to that, I believe he brought certain of these records with him, which really, all we needed was what he did here. But as I recall, he brought quite a large amount of things to his office over a period of several months.

The **Chairman**. Well, now, can you recall what those things were that he brought in addition——

Mr. **Watson**. Not specifically.

The **Chairman**. Can you recall the kinds of things they were? Were they deposit books? Were they check stubs?

Mr. **Watson**. Generally speaking, it would have been the category of 1099's, interest income statements, interest and tax expenses that he had on his personal residence, the types of information that the 1040 and its associated forms call for.

The **Chairman**. Now, looking at Judge Claiborne's 1980 return, is the figure of $88,500 in legal fees reported?

Mr. **Watson**. Not in the category in which you requested—not as you ask that question.

The **Chairman**. Is it reported anywhere on his return?

Mr. **Watson**. Yes; if you'll give me a second, I'll be glad to explain how that figure is on the tax return. I believe I read a quote where someone said this is the worst looking tax return he'd ever seen, and there are certain parts of it of which I'm not too proud. Schedule D is an example. It is the page that sets forth the gains and loss on your business or your investments. The figures that are on this page show a number of 1978 and a number of 1980 and a number of 150,000, a number of 250,000, and a number of 100,000.

What my preparer, based on her notes, did was, she reduced a long-term capital loss by a figure of $100,000. We arrived or determined to use a figure of $250,000 as the value of his business, arbitrarily.

However, I have sufficient documentation to back up that that business was worth 250,000 or more dollars.

The $88,500 is a part of the $100,000 reduction. In addition, the difference between the two as I recall had to do with how he had deducted a law library that he gave to a university. I believe on an earlier return, he had taken a partial deduction for that law library based on its depreciated value. But as a gift, you of course can take fair market value.

I do not know, and I don't have the back-up figures, and I don't recall discussing with Ms. Travaglia, exactly how she arrived at this calculation, but I do know that's what that calculation is all about. The $100,000 that you see as a loss, inappropriate as it may have been at the time, as inappropriate as it may be now, there is no disputing the fact that the $88,000—$88,500—was included in that $100,000 reduction.

The CHAIRMAN. Just a minute ago in answering that question you said "we determined". Who is "we"?

Mr. WATSON. My input on that would have been—Ms. Travaglia wrote a note on the very yellow forms that you refer to, and on that particular document she spells out at the bottom of the page, with an asterisk up toward the $88,000, where she alludes to the fact that this income can be in some way used to offset this long-term capital loss.

As I previously testified, of all the things I am, the thing I'm not is an accountant. And I own a tax preparation company and an accounting business, but that doesn't mean that I am a qualified accountant, nor have I held myself out to be.

The reductions she refers to in here, she suggested that to me, and I said, "If it will work, as far as I'm concerned we can go for it."

The CHAIRMAN. So when you said "we determined", you are talking about yourself——

Mr. WATSON. And Ms. Travaglia.

The CHAIRMAN. And did Judge Claiborne——

Mr. WATSON. Judge Claiborne had no knowledge of any of this.

The CHAIRMAN. He didn't participate in that determination.

Mr. WATSON. No, he didn't.

The CHAIRMAN. Now, on a tax accounting system of cash accounting, again, Senator Heflin's question, explain why you thought that paid legal fees could be handled on a capital loss basis in Judge Claiborne's tax return.

Mr. WATSON. I thought that because Ms. Travaglia was a qualified accountant, and she suggested it. I had no reason to argue with it.

The CHAIRMAN. The Senator from Maryland, Mr. Sarbanes, asks: How did Judge Claiborne come to sign the 1980 tax return?

Mr. WATSON. Well, it seems to me he signed one in his office, and we delivered one. My best recollection is that we delivered the 1980 tax return to his chambers, where he effected his signature, and I assume, mailed it.

The CHAIRMAN. Are you prepared to go forward now, Mr. Chabraja?

Mr. RODINO. Mr. Chairman, may we have a 10-minute recess? We have got to get out. Nature sometimes calls.

The CHAIRMAN. The Chair is unable to overrule that request. [Laughter.]

The CHAIRMAN. We will take a 10-minute recess.

[Short recess.]

The CHAIRMAN. Will Mr. Watson please return to the witness chair?

Mr. Watson, you understand that the oath that you took to tell the truth is still binding upon you?

Mr. WATSON. Yes, I do.

The CHAIRMAN. I have one further question from a member of the committee, the Senator from New Mexico, Mr. Bingaman: To the extent that Judge Claiborne's 1980 tax return understates his income for that year, is it your testimony that the understatement results from the errors of Ms. Travaglia, rather than from erroneous information that was supplied to you by Judge Claiborne?

Mr. WATSON. There is no question about that, sir.

The CHAIRMAN. Your answer is "Yes"?

Mr. WATSON. Yes.

The CHAIRMAN. And Senator Heflin inquires, asks you to explain all the written language in schedule D—not the figures—just explain what is meant by the——

Mr. GOODMAN. Mr. Chairman, may I make a suggestion? I think in the interest of clarity, the document that the witness has in front of him is virtually illegible. We have a blowup, which actually makes the writing much more clear, and I think it would be helpful to everybody if they could see the words in front of them at the time.

The CHAIRMAN. Is there any objection on the part of the——

Mr. CHABRAJA. Not at all. As a matter of fact, it would be terribly helpful if the Senate could produce their original. My understanding is that this is a yellow document with multicolored ink.

Mr. GOODMAN. No; this is a different one. We are talking about the tax return.

Senator HEFLIN. No; this is schedule D.

Mr. CHABRAJA. Oh, just schedule D.

The CHAIRMAN. Just schedule D.

Mr. CHABRAJA. I thought we were talking about exhibit 10.

Mr. GOODMAN. With the Chair's permission, I will put it up on the easel.

The CHAIRMAN. Yes; if you will, please.

Mr. WATSON. Could you give me the number of where that tax return is located in the book?

The CHAIRMAN. It is going to be right behind you there in just a moment.

It is exhibit No. 27, if you want to look at it in your book, the House managers' exhibit No. 27.

First of all, would you tell us whose writing is shown on that return?

Mr. WATSON. That is Charlotte Travaglia's handwriting.

The CHAIRMAN. Now would you explain the language?

Mr. WATSON. As near as I can make that out, it appears to be "Accounts receivable for law practice left upon"——

The CHAIRMAN. Well, I am going to send the original to you, since you are having trouble reading even the enlargement.

Mr. WATSON. OK. I can hardly see that.

The CHAIRMAN. If you went close to that enlarged copy——

Senator HATCH. Pick up the microphone and you can hold it there.

Mr. WATSON. This appears to be, "Accounts received for law practice left upon"—it looks like "ETR"—"of confirmation to judicial/HS court appointment 1978," an arrow drawn that says, "Type here."

The CHAIRMAN. And that is the only language which appears——

Mr. WATSON. In addition to that, I think it was previously covered—in the "Date acquired" it says "1978"; in the "Date sold" it says "1980"; "Gross Sale Price Less Expense of Sale, 150"; "Cost for Other Adjustments, 250"; "Loss, 100"; "100", "100", and "100" in brackets indicating loss.

The CHAIRMAN. And those are the figures which you referred to earlier when you said "We determined"?

Mr. WATSON. That is correct.

The CHAIRMAN. What did you include in the term "accounts receivable"?

Mr. WATSON. As I recall—and there again, when I refer to "we", I generally refer to "we" when I talk about my practice or my company—my involvement in the determination was very limited. What I am assuming she put in there, because they are items we discussed, was a value that she attached to the law books in addition to the $88,500.

The CHAIRMAN. And when you said "she" put in there, you are referring to——

Mr. WATSON. Charlotte Travaglia.

The CHAIRMAN. Now, what went into that figure?

Mr. WATSON. To the best of my knowledge, Mr. Chairman, the $88,500 and any residual value of this law library or other equipment that she took into consideration.

The CHAIRMAN. But how did that add up to the figures, the round figures that you have got there?

Mr. WATSON. I have no idea.

The CHAIRMAN. Did any of those figures come to you from Judge Claiborne?

Mr. WATSON. No, sir.

The CHAIRMAN. Did he participate in the determination of those figures?

Mr. WATSON. No; he did not. He delivered to our office the yellow pad with the $88,500 on it.

The CHAIRMAN. Exhibit 10?

Mr. WATSON. I beg your pardon?

The CHAIRMAN. Exhibit 10?

Mr. WATSON. Exhibit 10. In addition to that, we—I say "we" again—there was a discussion that I recall of what happened to various elements of his law practice when he closed it down in 1978.

The CHAIRMAN. Do you know how—when you said "we determined"—how did you and Ms. Travaglia reach the sum, arrive at the sum, of $250,000?

Mr. WATSON. One paper that I would certainly like to have today would be a copy of Ms. Travaglia's notes and her addition when she came to the conclusion of that figure. I do not know how it was done. I do not know what it includes except the two items I told you, eighty-eight thousand——

The CHAIRMAN. What you are saying now is that it wasn't "we determined"; you are saying now that "she determined"?

Mr. WATSON. Anything that is done in my office, I have something to do with it; that means "we". I had a minimal amount of input in the preparation of this return. I do not know how Ms. Travaglia arrived at $100,000.

The CHAIRMAN. But what you——

Mr. WATSON. I know the elements that we had discussed, and the elements were some residual value of the law practice and $88,500 in what we called "collected accounts receivable".

The CHAIRMAN. And what you are telling us now is that the $250,000 resulted from her calculations?

Mr. WATSON. Yes. I believe—the $250,000, that's a different question than you have been asking me—the $250,000 figure was one that she showed to me and she said, "I believe the Judge's law practice is worth at least this much money. Do you agree?"

And I said, "It doesn't make any difference. The loss that he has had on the law practice, if he carries it on that schedule D, it would take him 100 years to use it up."

The CHAIRMAN. Well, now, who determined that value of $250,000?

Mr. WATSON. Ms. Travaglia. Ms. Travaglia arbitrarily decided to use the conservative figure of $250,000 as the value of the law practice.

The CHAIRMAN. Did she explain to you how she arrived at that figure?

Mr. WATSON. I didn't ask her to explain. It was an arbitrary decision that was considerably less than the practice was worth. It had little relativity since, if the loss were used, were approved and accepted by the Internal Revenue Service in an audit, that would have taken him 33 years to use it up.

The CHAIRMAN. Did either you or Ms. Travaglia receive any information from Judge Claiborne which led to the adoption of that figure of $250,000 as the value of the law practice?

Mr. WATSON. We had some general discussions about it. The reason why I wouldn't have hesitated——

The CHAIRMAN. With whom?

Mr. WATSON. I discussed with Judge Claiborne what he thought his practice was worth. Of course I am familiar with the elements of a law firm. In my career, when I was a manager for the Metropolitan Life Insurance Co., I was also the advanced underwriting adviser for 11 Western States. My job at that time dealt with the State evaluation, the valuation and appraisal of businesses, farms, homes—any asset which you may have to pay a State tax on.

So, for her to suggest to me that his law practice was worth a minimum of $250,000 was not a figure I would question at all.

The **Chairman**. Now, you say you had some discussions with Judge Claiborne about it.

Mr. **Watson**. Yes, I discussed with him about his—what I was curious about was knowing how long he'd had his business in effect; the relative success and community awareness that he commanded, why he just suddenly—why did he just close the office down, as opposed to taking in partners or maybe incorporating, or selling it. That was, of course, curious to me.

The **Chairman**. Well, now, did you suggest this figure of $250,000 to Judge Claiborne, or did he suggest it to you?

Mr. **Watson**. No. We just—we arbitrarily—or, Ms. Travaglia arbitrarily determined the figure, which I had no reason to disgaree with, and Judge Claiborne had no reason to disagree with me.

The **Chairman**. And you discussed it with him?

Mr. **Watson**. Yes, I believe I did, by explaining to him that the relative value was insignificant because I doubt that he could live long enough to use up that long-term capital loss.

The **Chairman**. And he agreed with that figure of $250,000?

Mr. **Watson**. He raised no objection, so I assume he agreed.

The **Chairman**. Now, what about the figure of $150,000 which also appears on schedule D?

Mr. **Watson**. I don't recall that we had any discussion with Judge Claiborne about that.

The **Chairman**. What went into that figure?

Mr. **Watson**. Now, which one—the 100?

The **Chairman**. The 150,000—how did you arrive at that figure?

Mr. **Watson**. Well, I think what Ms. Travaglia intended to do was subtract the 100,000 from the 150 and wind up with a net loss of 100. What appears to have happened, and I don't know—it is one or the other, that she used, and one of these figures—and you know, after looking at this and being able to see it a little bit better, when I testified earlier this morning that she had used $100,000 reduction from the cost or value of the business, I am incorrect. What she had used was 150,000. The significance is nothing— I don't see much significance except to re-explain whatever figure she used included the accounts receivable that he had collected and the residual value of that law practice.

The **Chairman**. But you are saying that that $150,000 figure was not in fact discussed with Judge Claiborne?

Mr. **Watson**. Not that I recall.

The **Chairman**. Now, did Judge Claiborne see schedule D as you prepared it?

Mr. **Watson**. Yes. As I recall—and there again, the older I get, the vaguer my memory is in some respects—the two tax returns, the 1980 and the 1981 tax returns, as I recall, we delivered, or I delivered one to his office, and he picked up one in the office. I couldn't with specificity say which one was which. On the occasion of the one that we delivered, or I delivered, we went through that tax return rather casually. The one that he picked up in the office was also gone through rather casually.

The **Chairman**. Do you recall that he looked at schedule D, however casually?

Mr. **Watson**. He would have—if he looked at all the pages—and as I recall, he thumbed through the tax return, or I thumb through the tax return as a general practice—I do not see how he could have missed seeing that page.

The CHAIRMAN. It is your recollection, then, that he saw schedule D?

Mr. WATSON. As far as I know; I can't speak for the judge.

The CHAIRMAN. Well, I am asking you for your recollection.

Mr. WATSON. My recollection is if he looked at it to the degree of recognizing that particular page or absorbing the information on it, I can't speak. He obviously looked at the tax return.

The CHAIRMAN. Did he indicate any approval of schedule D, or disapproval?

Mr. WATSON. He didn't express any disapproval.

The CHAIRMAN. Did you tell Judge Claiborne that you would not be filing a schedule C with the figure of $88,500 reflected on it?

Mr. WATSON. I don't recall that we discussed a schedule C.

The CHAIRMAN. Well, now, you don't recall, or you didn't——

Mr. WATSON. I don't recall.

The CHAIRMAN. You just don't know?

Mr. WATSON. I don't know. I mean, I don't have any recollection of discussing a schedule C.

The CHAIRMAN. Now, one more time. If you know—if you know—can you tell us whether Judge Claiborne saw schedule D and whether he approved schedule D?

Mr. WATSON. I don't know.

The CHAIRMAN. You don't know.

Now, did you ever discuss with Judge Claiborne his practice of paying for repairs on his home with cash instead of paying by check? That is a question which Senator Pryor would like to have answered.

Mr. WATSON. I can't recall specifically discussing whether he paid by cash or check. The only reference that I recall was he told me that he had spent a large amount of money over a long period of time on his house and that he could document the major expenses because he wrote a check for them, and most of it was done by local building contractors.

From that statement, that would imply to me that he possibly did spend some money in cash for which he didn't have a receipt. But the only thing we used on the tax return, based on the information that he gave us, was those items that he did have a canceled check for.

The CHAIRMAN. Senator Rudman propounds this question: Did you discuss with Judge Claiborne your theory of claiming a capital loss to offset his 1980 fee income?

Mr. WATSON. I don't recall any discussion with him of that nature.

The CHAIRMAN. But you did discuss the valuation of the law practice at $250,000?

Mr. WATSON. Yes; I'm not really sure that we discussed the 250. We discussed with him a value, and as I recall, I think I told him we used a much more conservative figure than what we really believed his law practice was worth. And I don't recall any additional discussions on that matter.

The CHAIRMAN. When you had this discussion about determining a value for his law practice, were you talking in general terms about Judge Claiborne's affairs, or were you talking specifically about preparing a tax return?

Mr. WATSON. No; we were going to—at that particular discussion—this was early on in doing business with him—the major problem he came to my office with was the sale and exchange of his personal residence. I spent most of my time talking about that. But then it occurred to me—what happened to the law practice when you went out of business? What did you do with it?

The CHAIRMAN. Well, now, was this in connection with preparing a return?

Mr. WATSON. It was in that first interview, yes.

The CHAIRMAN. And was that the purpose of that interview——

Mr. WATSON. That was the purpose.

The CHAIRMAN [continuing]. To retain you to prepare his return?

Mr. WATSON. That is correct.

The CHAIRMAN. And that was the point at which you arrived at a figure of $250,000 for the law practice?

Mr. WATSON. I don't think I made any calculations that quickly. No, I would say no, in the first meeting, we did not come to that conclusion.

The CHAIRMAN. But you did not at that point have a prepared schedule D before you?

Mr. WATSON. No, I didn't.

The CHAIRMAN. Did you assure Judge Claiborne, or did you tell, advise Judge Claiborne that his $88,500 in prior-earned legal fees need not be declared directly, but could be declared in some indirect manner?

Mr. WATSON. I can't recall specifically. I just don't recall whether we had a specific discussion on how we arrived at all the calculations on that tax return.

The CHAIRMAN. Mr. Chabraja?

CROSS-EXAMINATION

Mr. CHABRAJA. Good morning, Mr. Watson.

Mr. WATSON. Good morning.

Mr. CHABRAJA. Mr. Chairman.

If we could stay with House exhibit 27 in the larger of those two books for a while, I would like to spend a little time with you on that document.

Let's turn together back to schedule D. As I understand your testimony—and Mr. Watson, you correct me if I have misunderstood it, because I don't have a transcript—you had a conversation with Judge Claiborne about the possibility of taking a loss on his business?

Mr. WATSON. Yes.

Mr. CHABRAJA. All right.

Mr. WATSON. I would say so.

Mr. CHABRAJA. And you discussed that with him early on, didn't you?

Mr. WATSON. Yes.

Mr. CHABRAJA. Right at the first meeting?

Mr. WATSON. That's correct.

Mr. **Chabraja**. And you raised the idea of taking a loss on that business, didn't you?

Mr. **Watson**. To the best of my recollection, that's right.

Mr. **Chabraja**. And did you explain yourself to him?

Mr. **Watson**. Not in any detail.

Mr. **Chabraja**. Well, what did you say?

Mr. **Watson**. I asked him what happened to the business. He told me he closed it, and he told me the circumstances under which he closed it. Based on that, since he didn't sell it or get any money for it, my first reaction was he should have some kind of a loss on that business. And we discussed about that loss.

Mr. **Chabraja**. How one would develop a loss?

Mr. **Watson**. Not specifically how. I don't recall any in-depth discussions with Judge Claiborne about how I was going to do anything.

Mr. **Chabraja**. OK. So the concept that you are working now is an abandonment of a practice; is that what you are thinking about?

Mr. **Watson**. I don't think I understand that.

Mr. **Chabraja**. Well, let me try and make it a little more fundamental, if I can.

Mr. **Watson**. Please.

Mr. **Chabraja**. You were looking to develop a loss on something of value that one couldn't sell; is that fair?

Mr. **Watson**. That's what I was attempting to do.

Mr. **Chabraja**. He was, because of the circumstances, forced to close the door of his practice, thereby walking away from something of value?

Mr. **Watson**. That's correct.

Mr. **Chabraja**. Is that right; OK.

Now, with respect to schedule D which you have in front of you, do you see column E up at the top where, if you trace your finger down, you get to "$250,000"?

Mr. **Watson**. Yes.

Mr. **Chabraja**. All right. That's the number, I take it, that you testified about was Ms. Travaglia's arbitrary judgment as to the value of that business that had been abandoned?

Mr. **Watson**. That's correct.

Mr. **Chabraja**. That's correct; OK. And isn't it true, Mr. Watson, that you and Judge Claiborne had had a number of discussions, both by telephone and in person, with respect to establishing a value?

Mr. **Watson**. Over a course of 2 years, a preparation period, as I recall, we had a number of discussions.

Mr. **Chabraja**. Well, this is a couple month period, isn't it?

Mr. **Watson**. I couldn't say. No; I believe it was longer than that. It seems like he came in the office sometime in March, and the tax return was finally filed June 15.

Mr. **Chabraja**. All right.

Mr. **Watson**. So, it was 3 or 4 months, or whatever it was.

Mr. **Chabraja**. Three; OK.

If I may approach the witness, Mr. Chairman, the counsel to the Senate suggests that you look at the original, which might be helpful to you.

Let me back up, if I may.

Senator **Heflin**. Have the originals been made a part of the record?

The **Chairman**. They have been.

Mr. **Chabraja**. Mr. Watson, your recollection is that Judge Claiborne visited with you for the first time sometime in March?

Mr. **Watson**. That's my recollection.

Mr. **Chabraja**. And you filed the return in June; so we are talking a 3-month period of time?

Mr. **Watson**. Something like that.

Mr. **Chabraja**. OK. The conversation——

Senator **Gore**. Mr. Watson, would you point the mike toward you?

Mr. **Watson**. I'm sorry.

Mr. **Chabraja**. And during this 3-month period, your testimony is you had numerous conversations with Judge Claiborne?

Mr. **Watson**. I can't tell you how many conversations I had with Judge Claiborne. I can't tell you how many phone calls I had with him. We had verbal conversations over that 3-month period relating to the preparation of this return.

Mr. **Chabraja**. I didn't ask you how many, specifically, but was it a bunch?

Mr. **Watson**. How much is "a bunch"?

Mr. **Chabraja**. Six?

Mr. **Watson**. Possibly.

Mr. **Chabraja**. OK.

And among those conversations, you had at least several where the two of you discussed establishing a value for this business that he left; isn't that true?

Mr. **Watson**. We had discussions. I don't know what you refer to in "several", whether it was 3 or 6 or 20.

Mr. **Chabraja**. Let's just leave it at more than one.

Mr. **Watson**. More than one. We had more than one discussion about this particular problem.

Mr. **Chabraja**. And Judge Claiborne, in an effort to assist you to establish this value, told you about some offers he had received for his practice, did he not?

Mr. **Watson**. I believe he was negotiating the sale of the business with more than one person at the time he went on the bench.

Mr. **Chabraja**. And those sales didn't occur?

Mr. **Watson**. Did not go through.

Mr. **Chabraja**. But he told you about the negotiations and the numbers that were being bandied about?

Mr. **Watson**. Yes, yes, he did.

Mr. **Chabraja**. All right. And based on that information, you and Ms. Travaglia determined that a quarter of a million dollars was a fair market value for that business; true?

Mr. **Watson**. It was substantially reasonable. As I recall, that was half of what he had—one of the offers was involved.

Mr. **Chabraja**. All right. And the concept you were working with in looking at these offers that the judge told you about was fair market value, right?

Mr. **Watson**. That's correct.

Mr. CHABRAJA. And you wanted to ascertain or estimate what the fair market value of the business was?

Mr. WATSON. What's it worth.

Mr. CHABRAJA. OK. And once you had made that judgment, or Ms. Travaglia had—or the two of you—you brought that down on line E, isn't it?

Mr. WATSON. That's correct.

Mr. CHABRAJA. OK. And you listed the quarter of a million.

Mr. WATSON. Yes, sir.

Mr. CHABRAJA. Mr. Watson, do you understand the concept, the tax concept, that with respect to sale or abandonment of a capital asset, one cannot use fair market value, but instead must use cost or other basis?

Mr. WATSON. Yes; I believe that I could agree with you on that.

Mr. CHABRAJA. And you were familiar with that concept at the time?

Mr. WATSON. Well, let's not say I'm familiar with it; I've heard of it.

Mr. CHABRAJA. You've heard of it?

Mr. WATSON. Uh-huh.

Mr. CHABRAJA. And you don't think I misstated that proposition?

Mr. WATSON. I don't know whether you did or not.

Mr. CHABRAJA. But had you also heard of it back in 1981?

Mr. WATSON. Yes, I have heard of that.

Mr. CHABRAJA. You did?

Mr. WATSON. Uh-huh—I'm sure I did.

Mr. CHABRAJA. So that wasn't something that was foreign to you back in 1981, was it?

Mr. WATSON. I can't say that it was pertinent information that I kept on the tip of my tongue.

Mr. CHABRAJA. All right. Let's say for a moment you didn't have it on the tip of your tongue. But did you look at the form?

Mr. WATSON. Yes, I looked at this form.

Mr. CHABRAJA. And do you see that column E?

Mr. WATSON. Yes.

Mr. CHABRAJA. There is a little instruction there, isn't there? Right up at the top it says, "Cost or other basis as adjusted"?

Mr. WATSON. Yes, I see that.

Mr. CHABRAJA. That tips you off we are talking about cost or other adjusted basis, doesn't it?

Mr. Watson Uh-huh—yes, that would.

Mr. CHABRAJA. It would. And also, that little instruction there refers to instruction 21 in the attached—not attached to this return—but to the instructions that one receives with a Form 1040, doesn't it? True?

Mr. WATSON. You're saying it.

Mr. CHABRAJA. Do you see it there?

Mr. WATSON. No, I don't.

Mr. CHABRAJA. Well, let's look right up there under the heading on column E.

Mr. WATSON. Well, the headings on this particular document are underneath a staple.

Mr. CHABRAJA. Why don't I let you look at mine.

Mr. WATSON. OK, or take this one apart.

Mr. CHABRAJA. May I approach the witness?

The CHAIRMAN. Certainly.

Mr. CHABRAJA. I think you can read it there, maybe with some difficulty. Look at that little legend there.

Mr. WATSON. Oh, sure. OK.

"Cost or other basis as adjusted." And of course, as I previously testified, it's my opinion that Ms. Travaglia made a substantial adjustment by using $250,000 as the value of that business. So where is our argument?

Mr. CHABRAJA. Your understanding of the concept of adjusted basis is Ms. Travaglia's reducing some estimate of fair market value?

Mr. WATSON. That was an adjustment.

Mr. CHABRAJA. Oh, yes, it sure was.

But this little legend that you just read also says in parentheses, "See instructions page 21." You saw that, didn't you?

Mr. WATSON. Yes, yes; it says that.

Mr. CHABRAJA. In case you need a little help. Did you take a look at line 21 in the instruction book—did you?

Mr. WATSON. Did I?

Mr. CHABRAJA. Yes; when you were working on this.

Mr. WATSON. No; I didn't look at the instruction book at all.

Mr. CHABRAJA. OK. Let's move on, off the 250.

Take a look at line D. Can you read the legend up at the top of line D? Is that also in——

Mr. WATSON. Would you point out what you are wanting me to——

Mr. CHABRAJA. I think it is back up in the—line D.

Mr. WATSON. OK.

Mr. CHABRAJA. Can you read that one?

Mr. WATSON. Sure. "Gross sale price less expense of sale."

Mr. CHABRAJA. And is that the line item that has "$150,000" on it?

Mr. WATSON. Yes, sir, it is.

Mr. CHABRAJA. OK. And this is the item, I take it, that you don't know how it came together; all you know is that $88,500 is in there?

Mr. WATSON. That's my recollection of the events.

Mr. CHABRAJA. And you didn't recall that, did you, when you testified before the grand jury in Reno, NV?

Mr. WATSON. No, I didn't. I had not reviewed the tax return nor any of the supporting documents for 2 years before I testified.

Mr. CHABRAJA. And as a matter of fact, you told the grand jury in Reno, NV, that you didn't have any recollection of that?

Mr. WATSON. I told the grand jury in Reno, NV, under examination, that I didn't know that the judge earned any legal fees in 1980. That's the way it was put to me. And when they said, "earned legal fees", that meant something different to me than for him to have collected an old debt.

Mr. CHABRAJA. Did you discuss with the judge that you would be able to shelter accounts receivable by valuing his practice?

Mr. WATSON. No, I don't recall any discussion like that; no. Sheltering his accounts receivable? The subject never came up.

Mr. CHABRAJA. That wouldn't be your word. But you told him you thought you could take a business loss here?

Mr. WATSON. I told him that on the very first meeting. I had no idea how much, if any.

Mr. CHABRAJA. Now, you were aware at the time you tendered this return to Judge Claiborne that Charlotte Travaglia had in that $150,000 the collections from accounts receivable; right?

Mr. WATSON. That was my impression of what happened.

Mr. CHABRAJA. All right. And you understand, don't you, that receipt of cash from accounts receivable is income to the recipient?

Mr. WATSON. Well, let's put it this way. I would have supposed that Ms. Travaglia, who was hired by me as an accountant, would know that. To be perfectly honest with you, I can't say that I did.

Mr. CHABRAJA. You didn't. Well, let's talk about that a minute. Tell me about Ms. Travaglia's background as you know it.

Mr. WATSON. Ms. Travaglia, I believe, is qualified to be a CPA if she took the examination. She seemed to be a very competent woman. The job she held prior to working for me was a comptroller of a company called Hawaii-Nevada, which was a very large real estate partnership. She seemed to be a woman with reasonable credibility and credentials.

She never presented me with a résumé nor did I ever ask for one.

Mr. CHABRAJA. Ms. Travaglia is a CPA, to your knowledge?

Mr. WATSON. I was under the impression she would be qualified. I don't think she is a CPA, but I believe she has the necessary education.

Mr. CHABRAJA. OK. I thought—maybe I misunderstood you——

Mr. WATSON. No, no.

Mr. CHABRAJA. You didn't say she was a CPA?

Mr. WATSON. No, I didn't say she was a CPA.

Mr. CHABRAJA. And you have a belief, or had a belief at that time, that she was qualified. Upon what facts did you base your belief?

Mr. WATSON. Just my observation of the work. I'm not sure I would be able to evaluate or judge a CPA's work or even hers. What she did seemed to be satisfactory. I do a lot of it.

Many of these returns are questioned by the Internal Revenue Service. I have audits. I never found her to be particularly lacking.

Mr. CHABRAJA. All right. You had some conversations with Ms. Travaglia about this very return, didn't you?

Mr. WATSON. Nothing that I wouldn't have had on any one of another hundred returns.

Mr. CHABRAJA. Do you remember her telling you that she was having trouble with this return?

Mr. WATSON. I believe she said something of that, but that was not uncommon to be having difficulty with a tax return.

Mr. CHABRAJA. And she came to you a couple times and said, "We're going to have to talk about this. I'm having some trouble with this, Jerry. Let's review it together," didn't she?

Mr. WATSON. I believe that she did discuss that with me.

Mr. CHABRAJA. And as a matter of fact, she told you that she would like to have her son look at it, and she would give up some of her commission if you'd let her son look at it, didn't she?

Mr. WATSON. I don't recall that it was specifically that return. She had suggested to me one time that we hire her son to review the tax returns prepared in the office. I considered that to be—after checking the arithmetic—and that doesn't seem to be a particular problem, so I declined to hire her son to review the tax returns.

Mr. CHABRAJA. Did she ever tell you she wasn't quite up-to-date on some of these tax concepts and was having a little trouble?

Mr. WATSON. I can't recall specifically.

Mr. CHABRAJA. Do you remember something about that?

Mr. WATSON. Sure. I mean, we have conversations—and it is a small office—we have conversations continually.

Mr. CHABRAJA. But you relied on her?

Mr. WATSON. I beg your pardon?

Mr. CHABRAJA. You relied on her?

Mr. WATSON. Relied on Ms. Travaglia?

Mr. CHABRAJA. With respect to this return.

Mr. WATSON. Well, if there was some problem with it, I wonder why it got put together and delivered.

Mr. CHABRAJA. Who delivered it?

Mr. WATSON. I told you I don't know who delivered this. One of the tax returns, he picked up in the office; one of the tax returns was delivered to his office. I don't remember which one.

Mr. CHABRAJA. When you sign one of these, does it mean you've read it?

Mr. WATSON. I beg your pardon?

Mr. CHABRAJA. When you sign a return as the preparer, have you read it?

Mr. WATSON. No, that doesn't mean I've read it.

Mr. CHABRAJA. It does not?

Mr. WATSON. No. It means I take responsibility for it.

Mr. CHABRAJA. OK. You have testified that you knew about the $88,500 of receivable income—and by the way, Mr. Watson, is there any doubt in your mind that cash received from accounts receivable is income? Is there any doubt about that in your mind?

Mr. WATSON. It has been made pretty clear to me over the last 4 or 5 years.

Mr. CHABRAJA. But did you know about that in 1981?

Mr. WATSON. No.

Mr. CHABRAJA. You didn't know about that?

Mr. WATSON. In 1981, I relied on a person I thought was a professional who did this tax return, and at the time it was done, I thought it was OK.

Mr. CHABRAJA. All right.

Mr. WATSON. If I hadn't thought it was OK, I would have never let it go out of the office.

Mr. CHABRAJA. Now, you agree with me, don't you, that if we look at that schedule D, we don't see the number $88,500 on it, do we?

Mr. WATSON. No, you don't.

Mr. CHABRAJA. OK. And your memory, as I recall, is that somewhere in Ms. Travaglia's notes, I would have found a computation that tallied up to 150; right?

Mr. **Watson**. If you will take a careful look at the so-called yellow pad, it has in Ms. Travaglia's handwriting basically what I assumed she did here.

Mr. **Chabraja**. It does?

Mr. **Watson**. Yes, it does.

Mr. **Chabraja**. That's exhibit 10? May I ask the chairman if we have the original of exhibit——

The **Chairman**. We'll check.

Mr. **Chabraja**. I think I have the wrong number. It may be exhibit 10; it is Judge Claiborne's exhibit 10.

[Pause.]

The **Chairman**. We will pursue this question and then, Mr. Chabraja, that is a rollcall vote on the Senate floor. It is close to the noon hour, in any event, so if you could complete this particular question, we'll then take a recess.

Mr. **Chabraja**. All right. If I may approach the witness.

The **Chairman**. Yes, certainly.

Mr. **Goodman**. Excuse me, Mr. Chairman.

I think, if it helps anybody, we have a blowup of this particular page, too, if the Chair would like me to put it up on the easel.

The **Chairman**. If you have it, you can put it there while Mr. Chabraja is pursuing this question, because we are under some time constraints.

Mr. **Chabraja**. My question to you, Mr. Watson, is, you have just mentioned that if you had those notes, you would be able to discern how Ms. Travaglia put together the 150,000.

Mr. **Watson**. When this document was given to Ms. Travaglia, she made a couple of corrections on it. In one place, Judge Claiborne had written down that he received dividends from New York Life, when in essence he had received—he had some interest earnings.

Mr. **Chabraja**. I am interested, Mr. Watson, not in a description of the entire document, but in anything that that document or the sheets next to it may do to illuminate how Ms. Travaglia put together the $150,000.

Mr. **Watson**. I started with that because it is the first indication on the return where Ms. Travaglia's handwriting appears. The next one is she says, "Also plus"—a little number—and then "345." Then, below that she has written, "What I see in this business transaction is fair market value was not considered on the book sale. He had a gain from the sale because the book value was used as a basis. If he has knowledge of their fair market value, we can go for it on the 1980 return and apply that to No. 2 income." Now, "No 2. income" has an asterisk after it, and an asterisk at the $88,000 that Ms. Travaglia put on there. And my understanding of what she was talking about was using the $88,500 in some sort of an offset, which, as I have testified previously, it sounded OK to me. But what do I know? I just own that company. I am not an accountant.

Mr. **Chabraja**. You went for it, didn't you?

Mr. **Watson**. That's right.

Mr. **Chabraja**. OK. After lunch?

The **Chairman**. We will take a recess at this point until 2. We'll try to resume promptly at 2.

[Whereupon, at 12:10 p.m., the committee was adjourned, to reconvene at 2 p.m. this same day.]

AFTERNOON SESSION

The **Chairman**. The committee will come to order.

The Chair takes notice of the fact that there is a joint session of the Congress which is scheduled for 10 o'clock tomorrow morning. Members on both the House and Senate side have indicated a need to attend that joint session. It makes it hardly worthwhile to try to reconvene between 11:30 and 12. I am going to suggest, therefore, that when we recess this evening, at what I hope will be a late hour, we will reconvene at 1 o'clock tomorrow, 1 o'clock, and we will try then to compress as much into the afternoon hours tomorrow as we would have in the morning and afternoon sessions.

Now today we anticipate that at about 3 o'clock there will be a rollcall vote in the Senate of some importance. We will have to go and cast that vote, but we will then try to run a little later to compensate for that delay.

When we recessed this morning, Mr. Watson was on the stand. We will ask him to——

Mr. **Rodino**. Mr. Chairman, before we proceed, it may be that since there is a vote on the intelligence authorization this afternoon, it is expected to come at around 3:30, 4 o'clock, and we would, of course, have to then request that we recess.

And of course, we do not know whether it is going to be a record vote, we anticipate that it will be, but we would have to ask for a recess.

The **Chairman**. Well, we will be guided by circumstances.

Mr. **Rodino**. Thank you.

Mr. **Goodman**. Mr. Chairman, the only request that I would have on behalf of Judge Claiborne is, with the Chair's, and the committee's permission, we would like to call some witnesses out of order because of their travel schedules and because of the starting time tomorrow.

We would like to put on some of the character witnesses who have come to town. I think that it would be an economic benefit as well.

The **Chairman**. Have you discussed it with Mr. Chabraja?

Mr. **Goodman**. No. I have not.

The **Chairman**. Why don't we continue with Mr. Watson's testimony, and I think we can probably arrange that, but I think you should discuss it with the managers.

Mr. **Goodman**. Very good.

The **Chairman**. Mr. Watson, will you return to the stand, please.

CROSS EXAMINATION—(RESUMED)

Mr. **Chabraja**. Mr. Watson, it is my memory that we were working with the 1980 income tax return, and it might help you if I, once again, secured the original of that.

[Pause.]

Mr. **Chabraja**. As we were looking at schedule D, Mr. Watson, before the noon recess, we were talking about the composition of the $150,000 sale and exchange price. Do you recall that?

Mr. WATSON. Yes. I do.

Mr. CHABRAJA. And we had, or you had testified, that while you were not certain of the makeup of that 150,000, you knew that the $88,500 was in there?

Mr. WATSON. That's correct.

Mr. CHABRAJA. OK. And I had asked you about the other items that that was made up of, and you referred my attention to, I think it is defense exhibit 10, and you looked at the original of that document, the yellow notes.

Mr. WATSON. They do not seem to be in this package.

Mr. CHABRAJA. You do not have those? OK.

And as I recall the last question and answer exchange we had, you read to me a note, in paragraph 5, by Ms. Travaglia, or at least that you identified as being in her hand, and told me that was how you were certain the $88,500 was in the return, in the $150,000 figure, is that——

Mr. WATSON. That is my recollection of the event.

Mr. CHABRAJA. OK. Now, I ask you, do you recall the event, or are you just picking it up off that piece of paper?

Mr. WATSON. You mean do I actually remember the time that she and I sat down and discussed this?

Mr. CHABRAJA. Yes.

Mr. WATSON. No. I don't remember that.

Mr. CHABRAJA. Do you remember discussing it with Judge Claiborne?

Mr. WATSON. No. I don't. No. I don't.

Mr. CHABRAJA. OK. And you also mentioned a piece of paper, that you think that Ms. Travaglia prepared in handwriting, a notation, that showed how she put together the $150,000, what the items were?

Mr. WATSON. No. What I said was, I certainly wish I had that piece of paper.

Mr. CHABRAJA. OK.

Mr. WATSON. So, I don't know that it—I'm reasonably sure she must have made some notes, and I certainly wish I had those.

Mr. CHABRAJA. Do you really think she had some notes, Mr. Watson?

Mr. WATSON. I'm reasonably sure she did, and Ms. Travaglia is here. You could ask her.

Mr. CHABRAJA. Well, I am probably going to get that chance. But do you not think that you and Ms. Travaglia have ballparked that number, just like you did the 250?

Mr. WATSON. That's possible.

Mr. CHABRAJA. More than possible. It is likely, is it not?

Mr. WATSON. Are you testifying?

Mr. CHABRAJA. Well, I am asking you, sir.

Mr. WATSON. Well, I've told you the best of my recollection already.

Mr. CHABRAJA. All right. Now, so we put the $150,000 together in any event, and we have a $100,000 loss, right?

Mr. WATSON. Yes. That's correct.

Mr. CHABRAJA. And as I remember, your view was, there is no point reaching for any more, at $3,000 a year it would take 33 years to amortize that loss in any event. Right?

Mr. WATSON. That's what I said.

Mr. CHABRAJA. OK. And after that schedule D was all put together, you in fact had a conversation with Judge Claiborne about it, did you not?

Mr. WATSON. Well, could you be a little more specific. Do you mean immediately after it was put together, or the time we delivered it, or——

Mr. CHABRAJA. Either. I will let you fix the time for me.

Mr. WATSON. To be honest with you, I cannot tell you the exact time that I spoke to Judge Claiborne after the tax return was prepared. We got it either in my office—as I told you before, I don't remember whether he picked it up in my office, or whether I delivered it. That happened to be my recollection of the disposal of those two returns. So, if he came and picked it up, I'm sure we had some small conversation. We had no indepth analysis of the preparation of this tax return or how it was done.

Mr. CHABRAJA. Well, let's leave the exact time for the moment, and see if you recall the substance of the conversation that you had with Judge Claiborne about schedule D.

Mr. WATSON. No. I can't recall the substance of the discussion any beyond what I've already told you.

Mr. CHABRAJA. Well, did you tell Judge Claiborne when you visited with him, that a schedule D treatment of this purported capital gain was audited by the Internal—that if, if it was audited—if this return, this 1980 return, were audited by the Internal Revenue Service, they would more than likely question that deduction?

Mr. WATSON. That sounds reasonable.

Mr. CHABRAJA. Well, I am not interested in whether it is reasonable or not. Did you say it?

Mr. WATSON. The fact of the matter is, if you discuss any tax return with me, it would certainly be appropriate for me, and I usually would tell you, that if they question any part of your tax return—or they have the right to subject any of it to question.

Mr. CHABRAJA. Well, let me—I understand the rights of the Internal Revenue Service. Let me direct your attention back to your conversation with Judge Claiborne. As a matter of fact you told Judge Claiborne that if the Internal Revenue Service audited this 1980 return, that schedule D treatment was certainly to raise questions, did you not?

Mr. WATSON. I don't remember for sure, but I would say it sounds very reasonable to me, that I would have made such a statement. I just don't recollect the exact time that statement was made.

Mr. CHABRAJA. Well——

Mr. WATSON. If you have some independent information to refresh my memory, I'd be glad to look at it.

Mr. CHABRAJA. Let me read it to you, maybe it will help you some, from your testimony, Mr. Watson, on recross examination at page 2826 of the transcript of the first trial.

At line six, you were asked by Mr. Shaw the question:

> Directing your attention to the Reno grand jury testimony, under oath, on June 8, 1983, page 178, beginning on line 9, could you read out loud the question and the answer, please.

Answer. You are reading now. Question:

> Judge Claiborne told you that you could document 150,000 on that schedule D?

Answer:

> I told him what our final results were, and this was, and, if this were audited the Internal Revenue Service would more than likely question the deduction.

Do you remember now?

Mr. **Watson**. That sounds very reasonable. As a matter of fact if the Internal Revenue Service had questioned this document in the ordinary procedure, in an office audit, this whole thing would have been resolved at that level, with nothing more than possibly a negligence penalty.

Mr. **Chabraja**. But certainly you anticipated the possibility that that schedule D treatment would be a problem?

Mr. **Watson**. If, if I said it, or didn't say it, I'll say it to you now. If you submit a tax return that shows this type of a loss on it, you run the risk of having that audited by the Internal Revenue Service. And I will say that over and over again to any number of clients. I see no reason why I wouldn't have said it to Judge Claiborne.

Mr. **Chabraja**. The name of your business, Mr. Watson, is Creative Tax Planning, is it not?

Mr. **Watson**. That's correct.

Mr. **Chabraja**. And that name is featured prominently on the doorway to your place of business, true?

Mr. **Watson**. There is a small sign on my door.

Mr. **Chabraja**. And—small?

Mr. **Watson**. It's about 18 by—it's about this wide.

Mr. **Chabraja**. All right. But you hold yourself out as an individual with creative abilities in the income tax area, don't you?

Mr. **Watson**. The name of the company is Creative Tax Planning and I'm sure that has some connotation to it.

Mr. **Chabraja**. All right. And you view yourself as creative, do you not?

Mr. **Watson**. I guess I would say so.

Mr. **Chabraja**. In some respects that has enabled you to attract some tax clients?

Mr. **Watson**. To be perfectly honest with you, that name has not attracted me hardly any business. I wish I had never adopted the name, because shortly after I did, practically everything in town was known as Creative, something or other, and it has not been a name that I was particularly thrilled about.

Mr. **Chabraja**. I take it you have changed it?

Mr. **Watson**. No. As a matter of fact it's—I haven't. I have a large amount of stationery and printed material, and those things cost money.

Mr. **Chabraja**. But certainly your schedule D effort on this income tax return was creative, was it not?

Mr. **Watson**. Are you asking for an opinion?

Mr. **Chabraja**. Yes. I would like your opinion.

Mr. **Watson**. I don't think it's spectacularly creative.

Mr. **Chabraja**. OK. Let's move into an area that I think you know something about. It is on that same return. If you could turn your attention to form 2119.

As I understand the story, Mr. Watson, when Judge Claiborne first visited you in late March 1980, he came to you with a problem having to do with the sale of his principal residence, did he not?

Mr. **Watson**. That's correct.

Mr. **Chabraja**. He advised you that he had sold that residence for $725,000, and had a taxable gain there that he wanted you to consult with him about?

Mr. **Watson**. That's correct.

Mr. **Chabraja**. He counseled with you about the best way to handle that gain and minimize tax, did he not?

Mr. **Watson**. That's correct.

Mr. **Chabraja**. All right. And my memory is that you counseled him to very carefully gather all of his books and records, and papers and receipts, and to do everything in the world he could do to document the basis of that home that he had bought quite some time ago. Is that not right?

Mr. **Watson**. That sounds appropriately correct.

Mr. **Chabraja**. OK. Approximately correct, or——

Mr. **Watson**. Approximately. I——

Mr. **Chabraja**. Anything else?

Mr. **Watson**. I don't remember——

Mr. **Chabraja**. OK.

Mr. **Watson**. The total sum of that conversation.

Mr. **Chabraja**. You be sure to stop me if I have any of it wrong.

Mr. **Watson**. I don't know.

Mr. **Chabraja**. OK. But that is what he came in to see you about?

Mr. **Watson**. That's what he came in about.

Mr. **Chabraja**. And the two of you talked about it?

Mr. **Watson**. Yes. We did.

Mr. **Chabraja**. And he went out, and apparently gathered the material that you had asked him for, very carefully?

Mr. **Watson**. That's correct.

Mr. **Chabraja**. All right. That material appears connected to this tax return, does it not, as schedule BL–3?

Mr. **Watson**. Yes, sir. It is.

Mr. **Chabraja**. There are several pages of rather detailed notes about the cost basis of his home, is not that——

Mr. **Watson**. That's correct.

Mr. **Chabraja**. As I look at page 2 of that statement, BL–3, I notice—you have page 2 there of the schedule? Flip over one more. There you go.

I notice, that after you see all of those—by the way, is that in your handwriting?

Mr. **Watson**. No, sir. It is not.

Mr. **Chabraja**. Whose handwriting is this?

Mr. **Watson**. Charlotte Travaglia.

Mr. **Chabraja**. OK. But even though Charlotte apparently is the person who wrote this schedule, I take it you were the person principally responsible for the computations with respect to form 2119, is that true?

Mr. **Watson**. No. I wouldn't say so.

Mr. **Chabraja**. No? Who did that?

Mr. **Watson**. You're talking about who filled out 21—page 2119?

Mr. CHABRAJA. Yes.

Mr. WATSON. I did.

Mr. CHABRAJA. You did?

Mr. WATSON. Uh-huh.

Mr. CHABRAJA. OK. And I thought you had testified earlier, that you were the fellow on the computations, and——

Mr. WATSON. Yes. I did part of the computation in this section of the return.

Mr. CHABRAJA. OK. Now looking at statement BL–3, at page 2, I see a cost basis here on the face of the schedule of $362,800.

Mr. WATSON. Yes. I see that figure.

Mr. CHABRAJA. OK. And let's flip over to the basis line on 2119, basis of the residence sold, line 6. What do you have there?

Mr. WATSON. $410,188.

Mr. CHABRAJA. You are off a little bit, huh?

Mr. WATSON. Apparently.

Mr. CHABRAJA. OK. I guess you could not pick that one up off your own schedule, huh?

Mr. WATSON. It's apparently an error on the tax return.

Mr. CHABRAJA. All right. Now up at line three, you have the selling price of the residence, $725,000——

Mr. WATSON. Yes, sir.

Mr. CHABRAJA. And you got that from Judge Claiborne, did you?

Mr. WATSON. Either from Judge Claiborne or from his escrow papers.

Mr. CHABRAJA. OK. He may have given you——

Mr. WATSON. One or the other.

Mr. CHABRAJA. The documents that established it.

Then you have, in line four, commissions and other expenses of sale, and you have $410,000 there, is that——

Mr. WATSON. That's correct.

Mr. CHABRAJA. Is that an error?

Mr. WATSON. Beg your pardon?

Mr. CHABRAJA. Is that an error?

Mr. WATSON. The 410,000?

Mr. CHABRAJA. Yes.

Mr. WATSON. What does it say on the other sheet?

Mr. CHABRAJA. It looks to me like—that is on the first page of statement BL–3. There are two items. It looks like they tally about, oh, 46,000, or so.

Mr. WATSON. Could you be more specific about where you are looking.

Mr. CHABRAJA. Well, I am looking on the first page of statement BL–3. Right under the sales price, you show commissions and other expenses of sale.

Mr. WATSON. Are you talking about this number, right here?

Mr. CHABRAJA. Well, I will come and take a peek. That number, right there.

Mr. WATSON. Yes. The number that you refer to is $410,188.

Mr. CHABRAJA. Now that is on line 4, is it not?

Mr. WATSON. That's on line 4.

Mr. CHABRAJA. OK. Now take a look at your schedule BL–3, and the very first page of it you see is the second item with a parenthetical reference of four, "Commissions and other expenses of sale"?

Mr. WATSON. Yes. Yes, I do.

Mr. CHABRAJA. And what does that look like to you, those two——

Mr. WATSON. "Commissions and other expenses of sale, $19,000."

Mr. CHABRAJA. And then there is——

Mr. WATSON. And then there's $27,062.

Mr. CHABRAJA. OK. So between commissions and fixup, what do we have, roughly $46,000?

Mr. WATSON. No. Between commission and fix-up? Well, I thought the fixing up on the house consisted of a, a lot more money than that.

Mr. CHABRAJA. Oh, you see "fix-up" in line—well, let's say "Commissions and other expenses of sale." Maybe I used the bad word. Are those two numbers the commissions and other expenses of sale, 19,000 and the 27,000?

Mr. WATSON. I'm not sure what they are.

Mr. CHABRAJA. Well, Mr. Watson, maybe you can give us some other help. Why do you not just tell me how it is you put this schedule together, that enabled you, in line 18, to get zero gain. Maybe you can tell me a little bit about that.

Mr. WATSON. I can't tell you any more than what's on this particular piece of paper.

Mr. CHABRAJA. Well, do you remember what your theory was?

Mr. WATSON. No. I don't.

Mr. CHABRAJA. Do you remember how it was that you could find that there was a $314,000 gain on this transaction, and then put none of the gain as recognizable in the taxable year 1980?

Mr. WATSON. No. I can't answer that question.

Mr. CHABRAJA. Did you talk with Judge Claiborne about it?

Mr. WATSON. No. I didn't.

Mr. CHABRAJA. You mean the two of you never sat down and visited about how in the world this man could recognize—I mean, have a gain of $314,000 and have you put zero taxable gain on this return?

Mr. WATSON. Well, from the information that I know, which we've already determined is rather limited when it comes to the area of accounting, based on the information that I saw, it appeared to me that Judge Claiborne had enough of an adjusted basis that there was no tax liability on the sale of his house. And I'm taking into consideration he was over 55, and he got a $100,000 exemption, and he also purchased another residence within a short period of time after he had sold this residence.

Mr. CHABRAJA. Do you know what adjusted sales price is? Is that a concept that you are familiar with?

Mr. WATSON. Well, I, I'm not sure I do.

Mr. CHABRAJA. All right. That word appears here on line 9. Did you—line 9 of form 2119.

Mr. WATSON. Yes. I see that number.

Mr. CHABRAJA. OK. Do you know what that line means?

Mr. WATSON. Well, what I think that line means is how much he paid for the house, less the improvements that he had made to the house, less his cost of sale. That's what I think it is.

Mr. CHABRAJA. OK. I would like to do something with you, Mr. Watson. I hate to belabor this but do you have a pen, sir?

Mr. WATSON. Yes, sir. I do.

Mr. CHABRAJA. OK. Let's go back to your schedule B-3. It has two pages, does it not?

Mr. WATSON. Yes, it does.

Mr. CHABRAJA. And in the middle of the first page there is a little Arabic No. 6 there, in parentheses, right? You see it? Are you with me?

Mr. WATSON. No, sir. I'm not.

Mr. CHABRAJA. All right. There are handwritten pages, statement BL-3. There you are. Now you have found it.

Do you see the little Arabic No. 6 there, where it says, "basis of residence sold"? You see that?

Mr. WATSON. $362,800?

Mr. CHABRAJA. That is right. Now that is your cost basis of that house, is it not?

Mr. WATSON. That is what this said, "basis of residence sold."

Mr. CHABRAJA. Right. And that is the purchase price, if you look at this, and all the expenses of fixing it up over the years, is that not right?

Mr. WATSON. That appears to be what this sheet shows.

Mr. CHABRAJA. OK. Now tell me again what line nine means to you. Adjusted selling price. Tell me what that means to you.

Mr. WATSON. It's, it's what you got for your property, when you subtract what you paid for it, and include all the improvements that you have made on it, and taken off your cost of sale.

Mr. CHABRAJA. OK. Let's do that. Let's put down $725,000 on that piece of paper because that is what you told me he got for it.

Mr. WATSON. OK.

Mr. CHABRAJA. Then let's subtract what you call the original purchase price plus all the fix-up, which these sheets show to be $362,800.

Mr. WATSON. What's—I beg your pardon?

Mr. CHABRAJA. $362,800 is what these sheets show.

Mr. WATSON. Is it $352,000?

Mr. CHABRAJA. All right. And then you told me you had to take off the costs and expenses of sale, did you not? and those were roughly $46,000. We will get you in the right neighborhood. OK. And what do you get down to?

Mr. WATSON. $306,000.

Mr. CHABRAJA. Order of magnitude. Maybe your math and mine is a little different, but is that not the gain on the sale, Mr. Watson?

Mr. WATSON. Yes, sir. That's what that would be.

Mr. CHABRAJA. That is the gain?

Mr. WATSON. That's right.

Mr. CHABRAJA. All right. And when you calculated the gain, you properly got $314,812. But I am not talking about the gain. I am talking about the adjusted sales price. Do you know what that is?

Mr. WATSON. Yes; I have explained what I know about adjusted sales price.

Mr. CHABRAJA. Is not the adjusted sales price just the purchase price less the commissions?

Mr. Watson. You could be right.

Mr. Chabraja. Do you know whether I am right, or not?

Mr. Watson. No; I don't.

Mr. Chabraja. All right. You tell me you do a lot of work in the real estate area?

Mr. Watson. Yes; I do.

Mr. Chabraja. In fact you view yourself to be an expert in that area, do you not?

Mr. Watson. I make, I make a living out of it.

Mr. Chabraja. Do you have some expertise in the area of taxation of real estate transactions?

Mr. Watson. Generally speaking, I have owned and managed my business all of my life and I—or all of my adult life, practically, and I generally delegate duties and rely on people.

Mr. Chabraja. OK. So you are telling me that this particular area, the taxation of real estate transactions, is not within your particular comprehension?

Mr. Watson. Well, let's put it this way: at the time this tax return was done, there's obviously some deficiencies in my area of expertise, and I'm perfectly willing to admit that, and I'm not trying to impress you that I'm some world expert in the affairs now.

Mr. Chabraja. Well, did you tell Judge Claiborne that you had figured out a way where he would not have to report any gain on this real estate transaction?

Mr. Watson. I don't believe that we discussed it in exactly those terms. What I believe we said, or as my recollection of that meeting, or our discussion was, that the figure—he mentioned to me that someone else had told him he would have to pay an income tax. I disagreed with it. I said that can't be possible.

Mr. Chabraja. What was the figure that somebody else told him?

Mr. Watson. I can't recall. It seemed to me like it was a couple hundred thousand dollars. I can't recall, exactly. It was a large number.

Mr. Chabraja. But at least he told you, that before he came to see you, somebody told him he had a big chunk of tax liability on this real estate transaction, didn't he?

Mr. Watson. That was, of course, a speculation because no one had calculated it, one way or the other.

Mr. Chabraja. But he came to you with that problem, faced with——

Mr. Watson. That's what I have testified to.

Mr. Chabraja. Did he tell you who it was that told him that?

Mr. Watson. I don't know that he referred to anyone by name.

Mr. Chabraja. But he was concerned about it?

Mr. Watson. Yes; he was concerned about it.

Mr. Chabraja. And he asked you if there was anything innovative, that you might be able to suggest, to get this tax liability shaped around?

Mr. Watson. I don't believe he asked me if there was anything innovative. He asked me if there weren't some factors—he may have even mentioned to me that he was over 55 and that—by that time that had come around—so, I don't recall that we had any discussion of him asking me to do something innovative.

Mr. CHABRAJA. By the way, did you and Ms. Travaglia get together and examine that form 2116, and put your heads together, and try and figure out if you were anywhere close to being right?

Mr. WATSON. I don't recall. We may have.

Mr. CHABRAJA. Now you mentioned in your direct testimony, that you were sufficiently concerned about this return to have it looked at by some Internal Revenue Service agents, did you not?

Mr. WATSON. No, No, I did not have any Internal Revenue Service agents look at it. I merely discussed it with a couple of Internal Revenue Service agents on an occasion when I saw them on some unrelated matter.

Mr. CHABRAJA. All right. So these Internal Revenue agents that you alluded to during your direct examination did not examine this return?

Mr. WATSON. No; they did not.

Mr. CHABRAJA. And were they, when you were visiting them on another matter, were they acting in an official capacity?

Mr. WATSON. No. They were not.

Mr. CHABRAJA. These were social friends, I take it?

Mr. WATSON. No; we—they were not social friends. They were in the Internal Revenue Service office in Las Vegas, when I was there involved with an audit of another client.

Mr. CHABRAJA. And who was the agent that you talked to?

Mr. WATSON. The first one was Noriko Lowe, and the second one was Mr. Ed White.

Mr. CHABRAJA. OK. Did you tell either of those agents that you had $88,500 in account receivable income and you had put it buried in a schedule D? Did you tell either one of them that?

Mr. WATSON. I can't recall exactly how I did that.

Mr. CHABRAJA. You do not remember those conversations?

Mr. WATSON. No; In detail, I don't remember those conversations.

Mr. CHABRAJA. But in any event somehow, you were comforted by those conversations?

Mr. WATSON. Yes; you could say I was comforted.

Mr. CHABRAJA. You had felt that some determination had been made that your work was right?

Mr. WATSON. Yes.

Mr. CHABRAJA. All right. And do you remember discussing with them form 2119 and how you had handled that large gain?

Mr. WATSON. Not specifically.

Mr. CHABRAJA. Do you remember when it was that you had your conversation with Judge Claiborne, where he identified to you that some other person told him that he was looking at a significant gain on this piece of property?

Mr. WATSON. I believe that was the first time we met in the office.

Mr. CHABRAJA. All right. Back in late March 1980?

Mr. WATSON. March 1981.

Mr. CHABRAJA. OK. You mentioned earlier in cross examination, that you recalled some discussions with Charlotte Travaglia, where she told you that she was having trouble with this return?

Mr. **WATSON**. No; I don't believe I said that. What I said was is we have ongoing discussions. It's a small office. Her specifically stating to me anything about having trouble with the return, I don't recall that conversation. I am not saying it didn't happen. It's just I don't recall it.

Mr. **CHABRAJA**. Maybe I recall your testimony a little differently.

Mr. **WATSON**. Well, in my testimony I don't recall either. If you have something that would refresh my memory in the area, I'd be glad to look at it.

Mr. **CHABRAJA**. Well, maybe we will have to call you back tomorrow. I do not have a transcript yet from earlier today. But you had several conversations with Charlotte Travaglia, and you——

Mr. **WATSON**. I spoke to Ms. Travaglia every day about something.

Mr. **CHABRAJA**. If I recall correctly, you told me that she raised issues with respect to this return with you, that indicated she was troubled.

Mr. **WATSON**. I thought you told me that.

Mr. **CHABRAJA**. I asked you that and you said yes. You want to change it? Take it away?

Mr. **WATSON**. I really—I really can't specifically state what happened, in what conversation, 6 years ago, or 5, however how long it's been.

Mr. **CHABRAJA**. Do you want to tell me now, that you relied on Ms. Travaglia in good conscience in connection with the preparation of this return?

Mr. **WATSON**. I hired Ms. Travaglia to do the accounting and do the tax returns in my firm. In the last 4 or 5 years, I doubt very seriously if I filled out two or three tax returns, including my own, personally.

Mr. **CHABRAJA**. If Ms. Travaglia had the laboring oar on this return, did she ever talk to Judge Claiborne?

Mr. **WATSON**. I don't recall. She may have; she may not. I don't, I don't recall that.

Mr. **CHABRAJA**. Now when the return was completed, did you take it to Judge Claiborne?

Mr. **WATSON**. As I previously testified, my best recollection of the events is that we did two tax returns. My recollection is I believe he came to the office and picked up one, and I believe we delivered one.

Mr. **CHABRAJA**. All right. And you are not certain about which?

Mr. **WATSON**. No. I don't remember which one.

Mr. **CHABRAJA**. All right. Let me see if I can help you.

Mr. **WATSON**. OK.

Mr. **CHABRAJA** Go to the signature line on the 1980 tax return. Do you see Judge Claiborne's signature?

Mr. **WATSON**. Yes; I do.

Mr. **CHABRAJA**. Do you recall whether that was signed in your presence?

Mr. **WATSON**. No; I don't.

Mr. **CHABRAJA**. Well, take a look at the date right next to his signature and tell me whose handwriting that date is.

Mr. **WATSON**. It looks like mine.

Mr. CHABRAJA. That would indicate that you were there when it was signed, would——

Mr. WATSON. That's correct.

Mr. CHABRAJA. All right. Does that refresh your recollection, you were present when that return was signed?

Mr. WATSON. No; it doesn't.

Mr. CHABRAJA. It does not. You have no present memory?

Mr. WATSON. I have no present memory of this tax return being signed, although he obviously signed it. It looks like my handwriting, and I signed it.

Mr. CHABRAJA. Well, let's see if I can help you out again.

Mr. WATSON. OK.

Mr. CHABRAJA. Mr. Watson, I am going to ask you whether you recall testifying, under oath, page 2639 of the transcript of the first trial, beginning at line 19, as follows: Question: "Now after the return was prepared in your office, what was done?" Answer: "After the return was—when a return is finally completed?" Question: "Tell me about this return. After this return was prepared, what did you do with it?" Answer: "No response."

Question: "Judge Claiborne's 1980 return." Answer: "The 1980 return? I believe this is the return that I delivered to his chambers." Question: "Did you take it personally?" Answer: "Yes. I did."

Question: "Did you speak with the judge on that occasion?" Answer: "Yes. I did." Question: "Would you tell us what was said." Answer: "We had a very brief meeting, gave him the return, he glanced through the return, and the meeting was approximately 15 minutes, and we had small talk conversation." Question: "What was done with the return then?" Answer: "I presume it was mailed since it was due the same day I delivered it to him." Question: "It was due the same day it was dated, wasn't it?" Answer: "That's correct."

Question: "Did he sign it in your presence?" Answer: "I believe that he did because this appears to be his signature but the numerals, 6-16-81, are in my handwriting."

Do you recall being asked those questions and giving those answers?

Mr. WATSON. No; I don't recall that, but since it is a part of the testimony of a trial, I have no reason to believe that you would distort it, and I, as I testified then, I believed what I said was my best recollection. I'm giving you today what is my best recollection, and based on what I see before me, it appears to be Judge Claiborne's handwriting, I appear to have written in the date, and I appear to have signed the return. That's my best recollection at this minute.

Mr. CHABRAJA. All right.

Mr. WATSON. The other conversation is 3 or 4 years old.

Mr. CHABRAJA. It is 2 years old.

Mr. WATSON. Two years old.

Mr. CHABRAJA. Your memory was a little better back then, was it not?

Mr. WATSON. It's closer to the events.

Mr. CHABRAJA. OK. And you certainly were telling the truth, to the best of your ability, when you appeared under oath at that first trial?

Mr. WATSON. What I'm telling you is what I, what I recollect, to the best of my ability.

Mr. CHABRAJA. All right. Now in connection with this income tax return, if you would turn back to the face page of the return, or page 2, more properly. I am sorry.

Can you tell me what you included on the return for total Federal income tax withheld from wages.

Mr. WATSON. $17,848.

Mr. CHABRAJA. And what did you include on line 56 for the total estimated tax payments?

Mr. WATSON. $4,182.

Mr. CHABRAJA. All right. Did you come to learn that in fact there were substantially larger estimated tax payments?

Mr. WATSON. Yes. I did.

Mr. CHABRAJA. All right. And those were not included in this income tax return because Judge Claiborne had not told you about them, right?

Mr. WATSON. That is my—that is what I, based on information I have seen, appears to have happened. He appeared to have filed his own request for an extension and paid money along with it, and he either didn't give it to us, or we didn't pick it up if he did. I couldn't say for sure which happened.

Mr. CHABRAJA. But you picked up the amounts that were shown on his 1979 return and you picked up the W-2 withholding information because you had those documents? True?

Mr. WATSON. That appears to be what's here.

Mr. CHABRAJA. And it is your belief that Judge Claiborne filed on or about April 15 his own request for an extension and filed an estimated tax payment, together with that, without your participation?

Mr. WATSON. That's my recollection.

Mr. CHABRAJA. In any event, you don't want to accept responsibility for that mistake, do you, Mr. Watson?

Mr. WATSON. Every error on this tax return I accepted the responsibility for it when I made it and when I signed it.

Mr. CHABRAJA. But, of course, you can't make a mistake if the taxpayer doesn't give you the information, can you?

Mr. WATSON. I beg your pardon?

Mr. CHABRAJA. Well, it's not your mistake if the taxpayer didn't give you the information.

Mr. WATSON. Oh, if the taxpayer didn't give you the information, no, I wouldn't be able to. Well, to answer your question, it answers itself.

Mr. CHABRAJA. Let's take a look again at those yellow sheets that Judge Claiborne apparently gave you.

The CHAIRMAN. You're referring to defense exhibit 10?

Mr. CHABRAJA. Yes. Excuse me, Mr. Chairman, I am. I forgot the number for a moment.

When was it that Judge Claiborne gave you these yellow sheets, Mr. Watson?

Mr. WATSON. I can't recall. They're not date stamped in. It was sometime after the March meeting and before the tax return was filed in June.

Mr. CHABRAJA. Does your office use a form to request information from taxpayers?

Mr. WATSON. Yes, we do.

Mr. CHABRAJA. Make it easy for them?

Mr. WATSON. Sometimes.

Mr. CHABRAJA. Do you have a form or workbook or a notebook that you give to them that seeks to elicit information from the taxpayer?

Mr. WATSON. I have used those from time to time. I don't routinely do that.

Mr. CHABRAJA. You don't.

Do you have some in your office, a nice little form that says Creative Tax Planning on it and certain line items?

Mr. WATSON. No, I don't.

Mr. CHABRAJA. You don't have any of those?

Mr. WATSON. No, sir, not that. I have had some forms like that but they didn't have my name on them.

Mr. CHABRAJA. But this is the document, or series of documents that you used as the basic information you received from Judge Claiborne to prepare his return?

Mr. WATSON. I believe that's correct.

Mr. CHABRAJA. All right. Now, when you're done with that document, after you have prepared the return, is it your custom to retain those worksheets upon which you relied in the preparation of a return in your file?

Mr. WATSON. No; it isn't.

Mr. CHABRAJA. Never?

Mr. WATSON. Oh, I wouldn't say never. It's just not a practice. My practice is, to give back to the client that stuff, the paperwork that belongs to him. I have no reason to keep a copy of it.

Mr. CHABRAJA. Well, Mr. Watson, have you ever been called upon to explain how in the world you prepared a return?

Mr. WATSON. Yes, I've been called upon to explain how this one was prepared.

Mr. CHABRAJA. You didn't have that document, did you?

Mr. WATSON. No, I didn't.

Mr. CHABRAJA. What did you have in your file when you went up to Portland to visit the grand jury and give them a bunch of documents? What did you keep?

Mr. WATSON. I believe it was his 1973 through maybe 1980, 1981 tax returns. I had copies of the tax returns for a significant period of time.

I'm not sure what else was in that file. However, it was all submitted into evidence so if you need to know it, it would be easy to retrieve.

Mr. CHABRAJA. Well, do you remember whether you had some bills and some other papers that——

Mr. WATSON. Yes, I did have some. There were some other things. I don't remember specifically what they were. I did not have this form.

Mr. CHABRAJA. I accept that.

Did you have some receipts and things like that, W-2's and some other information that you turned over to the grand jury?

Mr. **Watson**. I had some receipts. I recall some receipts being in the package of material that had inadvertently not been returned to Judge Claiborne.

Mr. **Chabraja**. What about Ms. Travaglia's notes, your working papers, did you have any of those?

Mr. **Watson**. I don't remember.

Mr. **Chabraja**. Have you seen your office's workpapers on this file?

Mr. **Watson**. No. I told you the only thing I had in my file that I recall was prior years' tax returns and some odds and ends of paperwork that we had not given back to Judge Claiborne.

You know, for whatever it's worth, I remember one package of bills that were distinctly from a local restaurant that we hadn't used on the return. I don't recall anything else.

Mr. **Chabraja**. Now, Mr. Watson, when you or Ms. Travaglia prepare a return, don't you customarily have worksheets where you do your computations, workpapers that you retain?

Mr. **Watson**. I just explained to you what we keep is copies of the client's tax return.

Mr. **Chabraja**. You keep the client's tax return and then give back the very documents that you relied upon to prepare the return?

Mr. **Watson**. That is correct.

Mr. **Chabraja**. So I take it that once you parted company with that document sometime in 1980, you never saw it again until you saw it at Judge Claiborne's house?

Mr. **Watson**. That's my recollection.

Mr. **Chabraja**. All right. And your recollection is also that when you testified before the grand jury in Reno, NV, you had absolutely no memory of having received the document that showed $88,500 legal fee income?

Mr. **Watson**. I can't recall exactly what I had. But there again if you have something to refresh my memory, a copy of the transcript—I've never seen the transcript. That was a long time ago and I simply don't recall.

The **Chairman**. Mr. Chabraja, we're going to have to recess in a few moments. If you can wind up this particular line of questions.

Senator **Warner**. Mr. Chairman, maybe you should ask him how much time he needs as opposed to saying——

The **Chairman**. No, no, we've got to go. We have to vote.

Mr. **Chabraja**. I could be done with this witness in another 10 or 15 minutes.

The **Chairman**. We don't have 10 or 15 minutes, I regret. If you have a pressing question right on this point, you can ask that. Otherwise, no.

Do I understand there's a vote in the House?

Mr. **Rodino**. No, not at this time, Mr. Chairman.

There's a quorum call.

The **Chairman**. There is a vote in the Senate, and we will go and vote and resume as quickly as possible, not longer than 15 minutes, hopefully less.

[Short recess.]

The **Chairman**. The committee will come to order.

Mr. **Rodino**. Mr. Chairman.

The CHAIRMAN. Yes, Mr. Chairman.

Mr. RODINO. May I, just for the purpose of being able to adjust our schedules on the part of the managers of the House inquire as to what the Chair entertains as the possibility of going, as the Chair said awhile ago, into this evening?

The CHAIRMAN. What is the commitment of the House this evening? Is it your anticipation the House will be sitting late tonight?

Mr. RODINO. No; I don't believe so. I believe that, except for a couple of votes that come on now, and possibly a final vote, the House should, I think, conclude at about 6:30 or so.

The CHAIRMAN. Why don't we try to go, say, till 6 o'clock and see where we are at that time?

Mr. RODINO. Thank you

The CHAIRMAN. Mr. Watson, would you resume the witness stand?

Once again, Mr Watson, I remind you that you are giving oath—you're giving testimony under oath. The oath you took is still binding upon you.

Mr. WATSON. I understand.

Mr. CHABRAJA. Mr. Watson, when you appeared before the grand jury in Reno, NV, you told the grand jury that Judge Claiborne had not told you of collections that he'd received in 1980 from his private practice before he'd become a judge.

Isn't that an accurate summary of what you told the grand jury?

Mr. WATSON. I don't believe I recall that at that time.

Mr. CHABRAJA. You don't?

Mr. WATSON. No. I'm not sure that—if you have a copy of the grand jury minutes, I'd be glad to refresh my memory.

Mr. CHABRAJA. Well, I'll tell you what I'll give you to refresh your memory, Mr. Watson. I'll show you page 6 of your own affidavit which you signed on or about April 30 of this year. I'll read it to you and maybe that'll refresh your recollection because I have some notes on mine. It's on page 6, the last paragraph of your own affidavit, and you say:

> After I returned to Las Vegas, I remembered that I had testified that Judge Claiborne had not told me of collections that he had received in 1980 from his private practice before he had become a judge.

Does that refresh your recollection?

Mr. WATSON. Yes. What you—what I'm saying there is when they were asking me the questions in Reno, I explained to you that I was under a tremendous amount of pressure that day.

Mr. CHABRAJA. I heard that.

Mr. WATSON. And I didn't recollect. What I thought they were referring to was legal fees. And what I thought they were implying is that he had collected legal fees while he was on the bench.

Mr. CHABRAJA. All right. But, in any event, you told them you didn't know about collection of legal fees?

Mr. WATSON. That's correct. I did not have these documents in my hands.

Mr. CHABRAJA. Then you got back to Las Vegas, and I believe you said you called up Judge Claiborne and you told him about what you'd testified to in Reno. And he said, "Jerry, you just got me indicted."

Mr. **Watson**. I believe that was the substance of what he said.

Mr. **Chabraja**. And he told you, don't you remember, I showed you that. And you ran over and met him at his house.

Mr. **Watson**. We went over to his house together, as I recall.

Mr. **Chabraja**. You went and looked through a stack of papers in the dining room and you found defense exhibit 10 in the stack, right?

Mr. **Watson**. That's what I recall.

Mr. **Chabraja**. And your recollection is what you found is exactly what it was that you'd had in your possession sometime ago?

Mr. **Watson**. That's correct.

Mr. **Chabraja**. On the other hand, you didn't do very much work with that Government exhibit 10, did you?

Mr. **Watson**. I don't believe I understand. What do you mean by not very much work with that?

Mr. **Chabraja**. Well, if I understood your testimony all day today, Ms. Travaglia had the laboring oar on this income tax return and you barely paid any attention to it at all and kind of skimmed the final, other than 2119.

Mr. **Watson**. Well, actually, what we talked about is when it was completed, that's what I did. When the information came into the office, I remembered it. It's a rather distinctive document.

Mr. **Chabraja**. Sure is. Did you notice there that there are several different inks on that document?

Mr. **Watson**. Several different what?

Mr. **Chabraja**. Inks, color ink.

Mr. **Watson**. I don't know that there are several different colors. When the judge brought this particular document in, there are some scribbles in the center of it that he and I made on the paper.

Mr. **Chabraja**. Well, let's look right up at the top.

Isn't the first line up there have to do with his wages?

Mr. **Watson**. Yes, it is.

Mr. **Chabraja**. The second line there has to do with income from private practice, isn't it?

Mr. **Watson**. Yes, it does.

Mr. **Chabraja**. All right. Aren't those inks different?

Mr. **Watson**. They look a little different to me, but that could be the pressure of the pen as he holds it in his hand.

Mr. **Chabraja**. Does the handwriting look the same to you?

Mr. **Watson**. It looks slightly different.

Mr. **Chabraja**. All right. Taking that into account, Mr. Watson, are you certain you want to tell me that that was on that sheet when you first saw it when it came in from Judge Claiborne?

Mr. **Watson**. I've been testifying for about 4 years that the best of my recollection, that's what happened.

Mr. **Chabraja**. OK. You also testified at some length today about Government agents who had treated you rudely if I can summarize your testimony that way. Is that a fair description?

Mr. **Watson**. Maybe, you may be being a little light.

Mr. **Chabraja**. All right. They were pretty rough with you, weren't they?

Mr. **Watson**. On a couple of occasions.

Mr. **Chabraja**. And when you went to testify in front of the grand jury in Reno, you said that you weren't feeling very well and you were somewhat intimidated.

Mr. **Watson**. That's correct.

Mr. **Chabraja**. Mr. Watson, you don't strike me as a man that intimidates very easily. As a matter of fact, you threw those agents out of your office once, didn't you?

Mr. **Watson**. Not physically threw them out of my office. I think that we had a discussion that they could draw the conclusion from that that the welcome mat had been withdrawn.

Mr. **Chabraja**. All right.

Mr. **Watson**. But that's no—it's still the fact of the matter is, on the morning I testified in Reno, NV, I was under such pressure to get there that I abandoned my car in front of the International Airport and told the police officer impound it and I'll try to get it back later, I don't have time to park it.

Mr. **Chabraja**. All right. That's pretty spunky conduct, I'd say.

Mr. **Watson**. Desperate conduct.

Mr. **Chabraja**. OK. Despite all that, Mr. Watson, you appeared and you testified, didn't you, and you testified truthfully?

Mr. **Watson**. To the best of my recollection.

Mr. **Chabraja**. All right. Then you came back to the first trial and the second trial of Judge Claiborne, and you testified as a defense witness, didn't you?

Mr. **Watson**. I was called by the Government.

Mr. **Chabraja**. In one trial, and in the second trial you were called by the defense, weren't you?

Mr. **Watson**. I believe I was called by the Government on both trials. That's my recollection of it.

Mr. **Chabraja**. Well, we'll let the transcript of the trial speak to that.

Mr. **Watson**. Yes. There's subpoenas some place.

Mr. **Chabraja**. But, in any event, you appeared and testified?

Mr. **Watson**. I appeared to testify.

Mr. **Chabraja**. You testified truthfully, didn't you?

Mr. **Watson**. To the best of my recollection.

Mr. **Chabraja**. And you testified without fear in a straightforward manner about your recollection in your transactions with——

Mr. **Watson**. I have never testified without fear, and I'm not testifying today without fear.

Mr. **Chabraja**. All right. But nobody here has bothered you, have they?

Mr. **Watson**. The consequences have not yet been established, and I'm concerned about that.

Mr. **Chabraja**. But, nevertheless, Mr. Watson, you don't want to say, do you, that any of that led you to perjure yourself at either the first or the second trial, do you?

Mr. **Watson**. Perjury is always a fear, not of what you did but what you are perceived to have done. I don't believe I have perjured myself. I believe I've——

Mr. **Chabraja**. You told the truth, didn't you?

Mr. **Watson** [continuing]. Testified to the best of my recollection of the events as they occurred. That is nothing more than my recollection of the event.

Mr. CHABRAJA. If you testified at another trial tomorrow, you'd testify the same way?

Mr. WATSON. No; I would testify to the best of my recollection. As you well know, your memory tends to fade in time.

Mr. CHABRAJA. I think the thing we're driving at, Mr. Watson, is you said you were under some pressure from Federal agents. I want to know if that did anything to impair your memory or to shape your testimony?

Mr. WATSON. Well, it certainly made my adrenalin pump. I didn't appreciate the way that I was being dealt with, and I don't believe that it had anything to do with my testimony in spite of the fact I thought they made every effort to attempt to have it affect my testimony.

Mr. CHABRAJA. But it didn't?

Mr. WATSON. I don't believe it did.

Mr. CHABRAJA. All right. Apart from your adrenalin, we don't have any problems.

Mr. WATSON. Beg your pardon?

Mr. CHABRAJA. Apart from your adrenalin, we don't have any problems with any pressure that you got from Government agents, do we?

Mr. WATSON. I wasn't physically abused.

Mr. CHABRAJA. And your testimony wasn't changed as a result of it?

Mr. WATSON. Wouldn't have made any difference. I testified to what I remembered.

Mr. CHABRAJA. OK. Tell me about the fee you charged Judge Claiborne for your work on his behalf.

Mr. WATSON. $2,000.

Mr. CHABRAJA. How did you arrive at such a fee?

Mr. WATSON. I can't recall.

Mr. CHABRAJA. Was your fee based on whether you do a good job for him or not?

Mr. WATSON. Fees are based on the same way you base your fees as a practicing attorney.

Mr. CHABRAJA. Result achieved?

Mr. WATSON. Result achieved or work done or a combination thereof.

Mr. CHABRAJA. All right. In this case, it wasn't just because the return said he was going to get a $20,000 refund, was it?

Mr. WATSON. No; I've had larger refunds before.

Mr. CHABRAJA. OK. What you really did for the judge was you took a transaction where he was anticipating large tax consequences, had been told that he had large tax consequences by other accountants, and you got him zero reported gain, that's what you'd done for him, wasn't it?

Mr. WATSON. That's what happened on the tax return.

Mr. CHABRAJA. All right. And you felt pretty good about that?

Mr. WATSON. I didn't feel any special way.

Mr. CHABRAJA. But you felt it entitled you to a $2,000 fee?

Mr. WATSON. Yes.

Mr. CHABRAJA. By the way, you indicated, I think, early on in your testimony that you met the judge in the Kiwanis Club, and that while you weren't friends or anything, you were parishioners of the same church.

Mr. WATSON. Yes. Judge Claiborne and I both were members of the same church.

Mr. CHABRAJA. And you both regularly attend and see each other on Sundays?

Mr. WATSON. No; I don't think neither one of us are regularly attending. And I haven't seen him on Sunday that I recall.

Mr. CHABRAJA. All right.

Mr. WATSON. However, I do recall him being at that church on some occasion in the past.

Mr. CHABRAJA. What's the name of the church?

Mr. WATSON. First Southern Baptist.

Mr. CHABRAJA. Mr. Watson, you were in the life insurance business once upon a time, weren't you?

Mr. WATSON. I was the manager for the State of Nevada for the Metropolitan Life Insurance Co.

Mr. CHABRAJA. Till what year?

Mr. WATSON. 1977.

Mr. CHABRAJA. What happened to you then?

Mr. WATSON. I got fired.

Mr. CHABRAJA. Why was that?

Mr. WATSON. Well, it's a very involved story. I have always thought it was because I had positions in industry that were contrary to the upper management of the Metropolitan Life, and I couldn't resolve those conflicts.

Mr. CHABRAJA. One moment, Mr. Chairman. I want to consult.

Excuse me, Mr. Watson. I was looking for a piece of paper.

Do you recall whether you had a direct conversation with Judge Claiborne about schedule D?

Did you tell him what the rules of the game were as you saw it on schedule D?

Mr. WATSON. Like I've testified, I had several conversations with him and I don't remember specifically any certain idea that we put any special effort into. It could have happened.

Mr. CHABRAJA. Well, let me read to you a question and answer put to you by Mr. Shaw at the first trial at page 2825, line 23:

> *Question.* Did you tell Judge Claiborne specifically that if this was audited that the Schedule D treatment that you did with the capital gains would be questioned by the IRS?

And your answer:

> As I recall, my direct conversation with Mr. Claiborne about the Schedule D was we would have to absolutely show a bona fide value for the business on which we were taking a loss.

Does that stimulate your recollection?

Mr. WATSON. That conversation could have occurred.

Mr. CHABRAJA. You just want to speculate about it?

Mr. WATSON. I just don't remember.

Mr. CHABRAJA. Well, if you remembered it back in 1984, do you have any reason to doubt the truth of it?

Mr. WATSON. Like I've explained to you earlier, there are a number of things that I can't recall at this day and time.

Mr. CHABRAJA. But you recall vividly——

Mr. WATSON. Beg your pardon?

Mr. CHABRAJA. But you recall exhibit D vividly, don't you?

Mr. WATSON. No; I don't recall this vividly. I recall it.

Mr. CHABRAJA. When we were talking about how you put schedule D together, and you told me that the sale of the property figure of $150,000 was put together using the 88,5 and other items, do you recall how you gathered the values on the other items?

Mr. WATSON. No; I didn't do those calculations. And I'm just telling you that's what I believe happened.

Mr. CHABRAJA. You can't shed any light on that at all?

Mr. WATSON. I can't shed any more light than I've already shed.

Mr. CHABRAJA. Do you know whether those items were picked up off the 1978 and 1979 income tax returns?

Mr. WATSON. No, I don't.

Mr. CHABRAJA. You don't have any idea?

Mr. WATSON. No, I don't.

Mr. CHABRAJA. You don't know whether they were already tax treated.

Mr. WATSON. All I can tell you is the note that's on here comprises what I know about what goes into that figure. And probably——

Mr. CHABRAJA. That's all you know about that, isn't it?

The only thing you know about that $150,000 figure is what you picked out of the face page of exhibit 10?

Mr. WATSON. That's what I recall.

Mr. CHABRAJA. And you're making a supposition about that 88,5 being included in that $150,000 figure based on the note in exhibit 10, aren't you?

Mr. WATSON. I am supposing that it was figured into that amount of money.

Mr. CHABRAJA. But you don't know what was figured into that amount of money, do you?

Mr. WATSON. To be honest with you, no.

Mr. CHABRAJA. Thank you

Mr. GOODMAN. May I examine, Mr. Chairman?

The CHAIRMAN. Mr. Chabraja, you're through for the moment?

Mr. CHABRAJA. Yes.

The CHAIRMAN. Mr. Goodman.

Mr. GOODMAN. Thank you.

REDIRECT EXAMINATION

Mr. GOODMAN. Mr. Watson, you're a businessman, aren't you?

Mr. WATSON. Yes, sir.

Mr. GOODMAN. You feature yourself as an entrepreneur, don't you?

Mr. WATSON. Of sorts.

Mr. GOODMAN. You like to think of yourself as being a man who knows how to do an awful lot of things, don't you?

Mr. WATSON. I know a little bit about a lot of things.

Mr. GOODMAN. And you like to hold yourself out to a lot of people on the proposition that you know a lot about a lot of things, don't you?

Mr. WATSON. I'm sure I do.

Mr. GOODMAN. And you set up your whole practice with the objective of making money, correct?

Mr. WATSON. That's correct.

Mr. GOODMAN. And you try to entice the public into coming in to see you and to utilize your services in a vast variety of areas, isn't that right?

Mr. WATSON. That's——

Mr. CHABRAJA. Mr. Chairman, he's leading his witness. He called him.

Mr. GOODMAN. Well, I would submit that, Mr. Chairman, that the concept of Mr. Watson as my witness is almost a ludicrous concept. He got my client indicted.

The CHAIRMAN. He is your witness, however.

Mr. GOODMAN. I called him as a witness so we would have the entire picture laid before the committee.

The CHAIRMAN. I have great confidence in your skill, Mr. Goodman, and I think you can phrase these questions so that we avoid the problem of leading.

Mr. GOODMAN. Thank you.

Do you have a nice office?

Mr. WATSON. Reasonably nice.

Mr. GOODMAN. So that people who come in, would they think, in your opinion, that you're successful?

Mr. WATSON. I would say so.

Mr. CHABRAJA. I think that Mr. Goodman is ignoring your admonition, and I object. These questions are all answered yes or no because he's suggesting the answer and putting it to him right on across.

Mr. GOODMAN. I'll try to do a little better.

Mr. Watson, do you have exhibit No. 31 in front of you?

Mr. WATSON. No, sir, I do not.

Mr. GOODMAN. Mr. Chairman, may I approach the witness, please?

The CHAIRMAN. Certainly.

Mr. GOODMAN. Thank you.

Mr. Watson, I'm going to show you what's been marked for identification as House exhibit No. 31, and ask you whether or not you recognize that document?

Mr. WATSON. Yes, I do.

Mr. GOODMAN. Was that document written by you?

Mr. WATSON. Yes, it was.

Mr. GOODMAN. When was it written?

Mr. WATSON. April 6, 1981.

Mr. GOODMAN. And to whom is it addressed?

Mr. WATSON. Judge Claiborne.

Mr. GOODMAN. Why was it written by you?

Mr. WATSON. This was shortly after we had had our initial discussion. And I wrote him a letter, attaching a form for determining the basis of property sold.

Mr. GOODMAN. What type of stationery did you use to write him the letter?

Mr. WATSON. My normal business stationery.

Mr. GOODMAN. What's at the top of the stationery?

Mr. WATSON. The words "Creative Tax Planning."

Mr. GOODMAN. And what's to the left of the stationery?

Mr. WATSON. A list of services that my office performs.

Mr. GOODMAN. And is that in print and on every letter that you send out of Creative Tax Planning?

Mr. WATSON. Yes, it is.

Mr. GOODMAN. Would you please read it to the committee?

Mr. WATSON [reading].

> Consulting services, accounting, bookkeeping, payrolls, union reports, computer services, income tax, corporation partnership, individual, tax audit assistance, tax planning investments, business consulting and management, insurance and bonding, life, health, casualty, homeowner's, business, auto group, tax deferrals, pension plans, IRA plans, property sharing plans, Keogh plans, employee thrift and estate—employee thrift, estate and trust planning, notary services, tax shelters, investments.

Mr. GOODMAN. All right. And what was the purpose of you having that on your stationery?

Mr. WATSON. To advise the public of those areas that I wanted to serve them.

Mr. GOODMAN. All right. Was it also to advise the public that you had a certain expertise in those areas?

Mr. WATSON. Yes, it was.

Mr. GOODMAN. All right. And you wrote to the judge on April 6, 1981, correct?

Mr. WATSON. That's correct.

Mr. GOODMAN. At that point in time, had you been hired to prepare his tax returns?

Mr. WATSON. Well, I couldn't say exactly. I would have probably made that assumption. If I hadn't——

Mr. GOODMAN. Well, as of April 6, 1981, did you have any discussions with the judge?

Mr. WATSON. Prior to writing this letter?

Mr. GOODMAN. Yes.

Mr. WATSON. Yes, I did.

Mr. GOODMAN. And what were the general areas of the discussions?

Mr. WATSON. The general areas of the discussion were his prior—let's see, not his prior taxes—the sale and exchange of his personal residence.

Mr. GOODMAN. Do you reference that in the letter?

Mr. WATSON. Yes, I would say I have referenced it.

Mr. GOODMAN. Well, in the first paragraph, does that refresh your recollection?

Mr. WATSON. Yes.

Mr. GOODMAN. To whether or not you had a prior discussion about the property?

Mr. WATSON. Yes, we had a discussion.

Mr. GOODMAN. And in the second paragraph, would that refresh your recollection as to what you had discussed with the judge prior to April 6, 1981?

Mr. WATSON. Yes, it does.

Mr. GOODMAN. And the third paragraph?

Mr. WATSON. Yes.

Mr. GOODMAN. What does the third paragraph refresh your recollection as far as the prior discussion to April 6, 1981?

Mr. WATSON. The possibility of taking a loss on your business looks good. We will assemble supporting information with your help to determine the amount of the loss.

Mr. GOODMAN. And the fifth paragraph, do you advise the judge as to what source you would be getting certain information concerning the real estate transaction?

Mr. WATSON. Yes, I do.

Mr. GOODMAN. And what was that?

Mr. WATSON. On the form we start with the purchase price, then the additional cost of purchase, then make a list of all the improvements. This would be a very extensive list. And the last is the cost of selling. Most of the information will come from your closing statement.

Mr. GOODMAN. Did the judge give you a closing statement?

Mr. WATSON. As I recall, he did.

Mr. GOODMAN. And did he provide to you the other information?

Mr. WATSON. Yes, he did.

Mr. GOODMAN. And where did he provide that?

Mr. WATSON. On the yellow sheet of paper.

Mr. GOODMAN. And what exhibit is that?

Mr. WATSON. I believe that's No. 10.

Mr. GOODMAN. All right. Now, I'm going to ask you the question again. As of April 6, 1981, did you have an agreement with Judge Claiborne that you were going to do his tax return?

Mr. WATSON. Mr. Goodman, I'm not sure at that exact time. It seems to me like on the first meeting that we had I believe he retained us.

Mr. GOODMAN. All right.

Mr. WATSON. That's my recollection.

Mr. GOODMAN. Why don't you look at the last paragraph and see whether that's still your recollection?

Mr. WATSON. Well, I assume from your discussion that you wish to have your entire income tax return completed by us. In that case, we need all your interest information, medical expenses, copies of your tax returns for the tax years 1973 through 1979, and any business expenses you incurred in connection with your practice prior to your appointment.

Mr. GOODMAN. All right.

Mr. WATSON. He obviously—I sent him this before he actually retained the company.

Mr. GOODMAN. All right. And after he said he wanted you to go forward with the return, did you receive any data from him?

Mr. WATSON. Yes.

Mr. GOODMAN. OK. Now, when you got the information from Judge Claiborne, what did you do with it?

Mr. WATSON. I believe I testified earlier that his didn't seem any—I don't have any recollection of it being anything significant, that I would treat it differently than I treat him now. Put it in a manila folder and set it aside until we get ready to do the tax return.

Mr. GOODMAN. Well, did you do anything with it other than put it in a manila folder? You personally, Jerry Watson?

Mr. WATSON. Yes. Judge Claiborne and I reviewed this form.

Mr. GOODMAN. Reviewed what form?

Mr. WATSON. That sheaf of yellow papers.

Mr. GOODMAN. All right. And other than reviewing the exhibit No. 10 material, did you do anything regarding the tax return?

Mr. WATSON. Not that I recall. I finally did some calculations on one sheet in the form.

Mr. GOODMAN. All right. Then would it be fair to state that you turned it over to somebody?

Mr. WATSON. Yes, sir.

Mr. GOODMAN. And to whom did you turn it over?

Mr. WATSON. Charlotte Travaglia.

Mr. GOODMAN. And you relied on Charlotte Travaglia for what?

Mr. WATSON. I had hired Ms. Travaglia to do the accounting and the tax preparation, and that's what I turned it over to her for.

Mr. GOODMAN. And did you expect that she was going to do it properly?

Mr. WATSON. I assumed that she would.

Mr. GOODMAN. All right. Did she have any questions about the return that she discussed with you?

Mr. WATSON. She may have, but I don't recall the discussions specifically about that tax return. And we do several returns.

Mr. GOODMAN. Well, didn't she ask you questions about the information that Judge Claiborne had given you?

Mr. WATSON. I'm sure she did.

Mr. GOODMAN. And did she ask you those orally or in writing?

Mr. WATSON. Most all of our conversations are orally.

Mr. GOODMAN. On occasion did she do it in writing?

Mr. WATSON. The only writing that I recall is the memo that is on exhibit 10.

Mr. GOODMAN. When you say the memo in exhibit 10, what are you referring to?

Mr. WATSON. The personal handwriting of Ms. Travaglia is at the bottom of the sheet.

Mr. GOODMAN. May I approach the easel?

Mr. WATSON. Item No. 5.

Mr. GOODMAN. And?

Mr. WATSON. Appears to be 6.

Mr. GOODMAN. Is it your testimony, Mr Watson, that the lower portion of the exhibit from 5 down to the bottom of the page is in Ms. Travaglia's hand?

Mr. WATSON. Yes, it is.

Mr. GOODMAN. All right. Who drew the diagrams, if you know?

Mr. WATSON. Those are two rather crude drawings attempting for me to get a better understanding of exactly how Judge Claiborne's property was situated.

Mr. GOODMAN. And who did the drawings?

Mr. WATSON. I believe we both did.

Mr. GOODMAN. Oh. Why would you do drawings on this chart?

Mr. WATSON. It was just a handy piece of paper and the subject of our discussion at that time was his property.

Mr. GOODMAN. And the purpose of the discussion, can you remember what it was?

Mr. WATSON. We were talking about all the improvements that had been made on it.

Mr. GOODMAN. Do you recall whether or not the property was bought at two different times?

Mr. WATSON. I believe it was.

Mr. GOODMAN. Do you recall whether or not the home rested on one particular portion of the property?

Mr. WATSON. Yes. The home rested on the north end.

Mr. GOODMAN. All right. And do these pictures depict that portion of the conversation?

Mr. WATSON. I think so.

Mr. GOODMAN. And after the pictures were made on this particular exhibit, Ms. Travaglia wrote you certain notes, did she not?

Mr. WATSON. That's correct.

Mr. GOODMAN. She was asking you for direction, wasn't she?

Mr. CHABRAJA. Objection. Mr. Goodman apparently can't restrain himself, but all of these questions are cross examination. Further, they are an attempt to impeach his own witness. He has got to take this witness on direct.

The CHAIRMAN. You can ask him, Mr. Goodman, does he know what she was asking.

Mr. RODINO. Mr Chairman, let me say we have a vote on now, the final passage on intelligence authorization. I presume that it's going to be at least a half an hour before we could return because there are two votes involved.

I would ask the Chair that we be permitted to recess.

The CHAIRMAN. Well, Mr. Chairman, it is now 5 minutes past 4. We will await your return with eager anticipation.

Mr. RODINO. Thank you very much, Mr. Chairman.

The CHAIRMAN. No later than 4:35.

Mr. RODINO. Thank you very much.

[Short recess.]

The CHAIRMAN. The committee will come to order.

The Chair wants to express appreciation to the Members of the House, who returned very promptly.

Mr. RODINO. I would now advise the Chair that we recognize our responsibilities, and despite the fact that there is another vote on, we are going to remain.

The CHAIRMAN. We appreciate that, and I hope it will be possible for us to go through till 6 o'clock now without interruption and make some real progress.

Mr. Watson, will you return to the stand?

Senator PRYOR. There is another House vote now.

The CHAIRMAN. They are going to sacrifice their records to the needs of this committee.

Mr. Watson, will you return to the stand? Once again I remind you that you are still under oath. You understand that?

Mr. WATSON. Yes, I do, Mr. Chairman.

Mr. GOODMAN. May I commence, Mr. Chairman?

The CHAIRMAN. Will you, please?

Mr. GOODMAN. Thank you.

Mr. Watson, I call your attention to exhibit No. 10, a blow-up of the first page of which is on the easel. I call your attention here to the item No. 5.

Would you characterize that as a—how would you characterize that?

Mr. WATSON. I characterize that as a statement.

Mr. GOODMAN. All right. Look at No. 6. How would you characterize that?

Mr. WATSON. That is a question.

Mr. GOODMAN. All right. And to whom was the question addressed?

Mr. WATSON. It was addressed to me.

Mr. GOODMAN. By whom?

Mr. WATSON. Charlotte Travaglia wrote the sentence.

Mr. GOODMAN. And did you respond to that request?

Mr. WATSON. I am sure I did because I believe we had Pioneer Citizens interest on the tax return.

Mr. GOODMAN. How many times did Charlotte Travaglia come to you to ask you for help on the Claiborne returns?

Mr. WATSON. I don't recall, Mr. Goodman.

Mr. GOODMAN. Was it more than one?

Mr. WATSON. It could have been. As I told you, we had ongoing conversations about a lot of things.

Mr. GOODMAN. Could it have been more than five times.

Mr. CHABRAJA. Objection. The question calls for speculation. This is not cross-examination, Mr. Chairman.

Mr. GOODMAN. I will rephrase the question.

Do you recall whether it was more than five times?

Mr. WATSON. No, I don't, Mr. Goodman.

Mr. GOODMAN. Do you recall whether or not you responded to Ms. Travaglia?

Mr. WATSON. I am sure I must have responded.

Mr. GOODMAN. Do you have an independent recollection as to whether or not you responded?

Mr. WATSON. No, I don't have.

Mr. GOODMAN. I call your attention to exhibit No. 27. Do you have the tax return in front of you?

Mr. WATSON. No, sir, I do not.

Mr. GOODMAN. Would you please turn to schedule D?

Mr. Watson, can you tell this honorable committee what was meant by the arrow?

Mr. WATSON. My interpretation of it was that she had written something at the top of the page that she intended to transfer to the bottom of the page.

Mr. CHABRAJA. Objection, Mr. Chairman, and move to strike. The witness is incompetent to testify. He is talking about an interpretation. It is obviously not his arrow.

Mr. GOODMAN. And I would submit, Mr. Chairman, that he has taken the responsibility as being the owner of the business for being responsible for the return, and if he knows why the arrow was placed there, I believe he is competent to respond.

The CHAIRMAN. Did he discuss this particular matter with Ms. Travaglia?

Mr. Watson. Mr. Chairman, to be honest with you, I don't recall.

Mr. GOODMAN. What is the notation, Mr. Watson, on the part 2, left-hand column?

Mr. WATSON. I read that to be "type here."

Mr. GOODMAN. Can you tell the committee why it would say "type here"?

Mr. **Watson**. My speculation is that the items that were noted——

Mr. **Chabraja**. I move to strike, Mr. Chairman. The witness is speculating.

Mr. **Goodman**. Do you know why?

Mr. **Watson**. Based on what I see, my conclusion is that it was intended that these notes be moved to the lower portion of this document.

Mr. **Goodman**. You are speculating, aren't you?

Mr. **Watson**. I would say so.

Mr. **Goodman**. You are assuming, aren't you?

Mr. **Watson**. Yes, sir.

Mr. **Goodman**. You really don't know a darn thing about this tax return , do you?

Mr. **Watson**. Not very much.

Mr. **Goodman**. You can't tell us whether or not Ms. Travaglia at this point in time even intended that to be a completed tax return, can you?

Mr. **Watson**. No, I can't.

Mr. **Goodman**. You don't know at this point in time whether or not Mrs. Travaglia even used this as a rough work sheet, do you?

Mr. **Watson**. I would speculate that that is exactly what it was.

Mr. **Goodman**. And you can't tell us with any certainty at this point in time whether you went over this tax return and this form with Judge Claiborne, can you?

Mr. **Watson**. To the best of my recollection, my testimony reflected that we had a very brief discussion about the tax return.

Mr. **Goodman**. Do you recall how you billed Judge Claiborne?

Mr. **Watson**. On the two different returns, they were different ways, and to tell you the truth, I can't.

Mr. **Goodman**. Do you recall whether or not you ever came to his office with a bill?

Mr. **Watson**. I believe I did.

Mr. **Goodman**. And would that have been a time different from the time that the return was actually received by him?

Mr. **Watson**. I can't recall. I recall, my recollection of the events is that I went to his office on one occasion and he came to my office on one occasion relative to the delivery of the tax returns.

Mr. **Goodman**. Now you have heard this tax return described in the past, have you not?

Mr. **Watson**. Yes, I have.

Mr. **Goodman**. How has it been described?

Mr. **Watson**. The most recent description that I have heard was that it was the worst tax return some gentleman had ever seen.

Mr. **Goodman**. Well, before that time, did it have any description which upset you?

Mr. **Watson**. Well, it has been alluded to in rather uncomplimentary ways by a number of people.

Mr. **Goodman**. Right. And it upset you, didn't it?

Mr. **Watson**. I would say so.

Mr. **Goodman**. Was it called an abomination?

Mr. **Watson**. It may have been, I don't remember that exact phrase.

Mr. **Goodman**. Would you agree with that characterization of it?

Mr. WATSON. Yes

Mr. CHABRAJA. Mr. Chairman, this is rank hearsay that he is attempting to elicit. I move to strike.

The CHAIRMAN. Well, he has answered it. I will allow the answer to stand.

Senator WARNER. Mr. Chairman, he didn't answer the last question. The question was would he consider it an abomination. I would like to hear his response to that.

Mr. WATSON. I am not particularly proud of this tax return. I'm not sure I understand the definition of abomination.

The CHAIRMAN. I have several questions on behalf of members of the committee.

Mr. Sarbanes asks how many tax returns did you prepare for Judge Claiborne?

Mr. WATSON. I believe we completed three.

The CHAIRMAN. For which years?

Mr. WATSON. My recollection is that we did 1980, 1981, and 1982.

The CHAIRMAN. How did your services as a tax preparer for Judge Claiborne come to an end?

Mr. WATSON. I don't know. I don't know that he has filed his 1983 tax return or filed an extension or exactly what he did with it.

The CHAIRMAN. In other words, you are not sure that it has come to an end yet, is that right?

Mr. WATSON. I beg you pardon?

The CHAIRMAN. You mean to say that you don't know that your——

Mr. WATSON. I have no knowledge of the tax returns other than the ones we prepared.

The CHAIRMAN. Do you still consider yourself Judge Claiborne's tax preparer?

Mr. WATSON. He hasn't used our firm in at least the last 2 years.

The CHAIRMAN. Has he dismissed you?

Mr. WATSON. No, he hasn't.

The CHAIRMAN. The telephone just hasn't rung yet, is that right?

Mr. WATSON. That is true.

The CHAIRMAN. All right. I think that answers that question.

Now the Senator from New Mexico, Mr. Bingaman, asks did you prepare Judge Claiborne's 1981 tax return as well?

Mr. WATSON. My firm, as I recall, did the 1980, 1981, and, 1982.

The CHAIRMAN. Please state whether basically the same procedures were followed by you and Judge Claiborne in 1981 in preparing the tax return.

Mr. WATSON. I would assume so.

The CHAIRMAN. Well, do you remember?

Mr. WATSON. Not specifically.

The CHAIRMAN. You don't remember?

Mr. WATSON. If we had a copy of it, I just don't recollect exactly what was on 1982. I am very familiar with this one.

The CHAIRMAN. Did you have conversations with Judge Claiborne about these other tax returns?

Mr. WATSON. I would assume—well, basically I have conversations with my clients prior to the preparation of the return, sometimes during.

The CHAIRMAN. Leaving assumptions aside. You must remember, it is not that long ago. Judge Claiborne is an important client. He is an important man in the community. If you talked to him about his tax returns, do you remember it at all?

Mr. WATSON. I previously testified that he came to the office on one occasion, to my recollection, and one was delivered, to my recollection.

The CHAIRMAN. Senator Pryor asks, did you assist Judge Claiborne in preparation of Judge Claiborne's financial disclosure report in May 1981?

Mr. WATSON. I don't believe we did.

The CHAIRMAN. Were you aware that on this financial disclosure report Judge Claiborne noted $88,500 in income for calendar year 1980?

Mr. WATSON. I became aware of that at a later date.

The CHAIRMAN. But you were not aware of it at the time that you prepared the return?

Mr. WATSON. I don't recall seeing that document.

The CHAIRMAN. Senator Gore asks, were you aware that Judge Claiborne had litigated tax law cases as an attorney and had presided over such cases as a U.S. district judge?

Mr. WATSON. I may have had some brief knowledge of that, whatever might have been in a newspaper. I didn't pay any particular significance to it.

The CHAIRMAN. Well, in the light of that fact, did you ask him for his views on whether or not your firm had prepared his returns correctly?

Mr. WATSON. I don't recall asking him that.

The CHAIRMAN. Now the Senator from Virginia, Mr. Warner, asks, do you know the definition of "capital gain" or "capital loss"?

Mr. WATSON. Well, I thought I did.

The CHAIRMAN. What is it?

Mr. WATSON. A capital gain is the profits you make off of a transaction. A capital loss is the amount of money that you might lose on a transaction.

The CHAIRMAN. What kind of a transaction?

Mr. WATSON. Could be the sale of a business, a sale of a house, a sale of a car, the sale of stock. To my knowledge, it applies to practically the sale of any item.

The CHAIRMAN. How does this differ from money that you may earn from other transactions?

Mr. WATSON. Earnings are taxable as earned income.

The CHAIRMAN. Can you show this committee any Federal law, any Internal Revenue regulation, any Internal Revenue ruling, any Federal court case, any instruction book for the preparation of tax forms that approves of including income earnings in schedule B, which is entitled on its face, "Capital Gains and Losses"?

Mr. WATSON. I previously testified I am not strong in that area and I don't know where any such law is.

The CHAIRMAN. How many times did you meet Judge Claiborne?

Mr. WATSON. I beg you pardon?

The CHAIRMAN. How many times did you meet Judge Claiborne?

Mr. WATSON. Oh, less than—over the 2- or 3-year period, I couldn't say. Three or four times a year possibly.

The CHAIRMAN. During this period in which you were preparing his returns?

Mr. WATSON. Over a 3- or 4-year period.

The CHAIRMAN. Now you meet a lot of people, don't you?

Mr. WATSON. Yes, I do.

The CHAIRMAN. In the course of your business?

Mr. WATSON. Yes, sir.

The CHAIRMAN. Some of them smart, and some of them not so smart, aren't they?

Mr. WATSON. That is about the size of it.

The CHAIRMAN. Where would you assess Judge Claiborne in that level of the smart and the not-so-smart?

Mr. WATSON. I would characterize Judge Claiborne as probably one of the finest attorneys in the country. He has demonstrated himself as a rather outstanding judge, according to what information I have.

The CHAIRMAN. Where do you assess him based on his personal business ability and looking back over his history? Is he one of the smart ones, or one of the not-so-smart ones?

Mr. WATSON. I do not consider Judge Claiborne to be a real good businessman.

The CHAIRMAN. But is he smart, or is he not so smart?

Mr. WATSON. He is smart.

The CHAIRMAN. Very smart?

Mr. WATSON. I consider him to be highly intelligent.

The CHAIRMAN. Again, Senator Warner: Based on your several meetings with Judge Claiborne and your other associations, do you consider him intelligent, do you consider that he has knowledge of tax law?

Mr. WATSON. I consider Judge Claiborne as I do a lot of other people. I believe he suffers from a little tunnel vision. He is highly intelligent in the area of laws. Based on what I have seen of his business career, he didn't seem to pay very much attention to his business career.

The CHAIRMAN. But that has nothing to do with your view that he is very smart?

Mr. WATSON. Just a little louder, please.

The CHAIRMAN. That has nothing to do with your view that he is very smart?

Mr. WATSON. He is a very smart man, yes.

The CHAIRMAN. Senator Pressler says, in your memory, did many or all of the returns that your firm filed on behalf of your clients look like the one in question?

Mr. WATSON. They vary in their degree of appearance. I have had any number of people who have prepared tax returns for me.

The CHAIRMAN. And they are handwritten?

Mr. WATSON. Yes, sir

The CHAIRMAN. And they have directions on them such as "Please type down here in a different box"?

Mr. WATSON. That particular one does.

The CHAIRMAN. Well, I am asking you about other typical ones.

Mr. WATSON. That may be.

The CHAIRMAN. Now I am advised that the Senate has just adopted a provision by which the Chair is authorized to recognize individual members of this committee to ask questions. This is a power vested in the Chair. It will be used with great parsimony and members should be advised thereof.

But in view of that fact, I am going to not ask the rest of these questions on behalf of members, but will recognize first Senator Rudman for a brief period. We will not put any time limit on it initially. We will test this process out.

Senator RUDMAN. Mr. Chairman, I appreciate the grant of the Chair, and I will be brief.

Mr. Watson, I only have two questions for you. First question, in your discussions with Judge Claiborne when you first started talking to him about retaining you as his tax preparer, were there discussions about the enormous tax liability that he was facing, and did you have discussions—I don't care specifically what they were, but general discussions about ways and means you might have to reduce his tax liability?

Mr. WATSON. The answer is yes.

Senator RUDMAN. My second question is, I would like to refer you to schedule D of the 1980 return. Column B of schedule D is entitled "Date acquired." Line C is entitled "Date sold."

Understanding that you supervised the preparation of this return, which was the work done by your employee, would you please tell the committee what was acquired in 1978 and what was sold in 1980 in the normal understanding of the meaning of those terms?

Mr. WATSON. I don't know.

Senator RUDMAN. Was anything acquired or sold, to your knowledge?

Mr. WATSON. In 1978, he closed down his law practice, or disposed of it.

Senator RUDMAN. I didn't ask you that, Mr. Watson.

Mr. WATSON. There was nothing——

Senator RUDMAN. I am asking you specific questions, and I want very narrow, specific answers.

Do you know if anything was acquired or sold in 1978 or 1980?

Mr. Watson No, sir, I don't.

Senator RUDMAN. Thank you.

The CHAIRMAN. Thank you, Senator Rudman.

Senator Pryor?

Senator PRYOR. I will pass for right now.

The CHAIRMAN. Senator DeConcini.

Senator DECONCINI. Mr. Watson, on your stationery that Mr. Goodman went over a number of areas on the consulting services, do you consider yourself an expert in all of these areas that are listed on your stationery?

Mr. WATSON. No, sir, I do not consider myself an expert in all of those areas. We simply offer services in those areas, and I generally try to hire competent enough people to perform the mission that we have taken out to accomplish.

Senator DECONCINI. So are you telling me if someone comes in and asks you a question on bonds and you don't consider yourself an expert, you hire someone to advise you to advise your clients?

Mr. WATSON. Yes.

Senator DeConcini. And is that the same situation as to income tax?

Mr. Watson. My income tax preparation has almost always been done by hired employees.

Senator DeConcini. So you don't consider yourself any type of an expert in income tax?

Mr. Watson. No, sir, I don't.

Senator DeConcini. And when Judge Claiborne came to you, and if you testified I didn't hear it, I might have been out of the room, did he ask you if you were an expert in income tax or if you had any expertise in the preparation of income tax returns, or anything as to your qualification to do income tax returns?

Mr. Watson. I don't believe, I don't recall that he did.

Senator DeConcini. Do you remember making any representations to him about your capabilities or your firm's, your corporation's capabilities to prepare income tax returns?

Mr. Watson. I don't recall any special significance that I placed on my credentials or my company's credentials.

Senator DeConcini. Thank you. Thank you, Mr. Chairman.

The Chairman. Senator Heflin.

Senator Heflin. Did you have a conversation with Judge Claiborne when he received the refund check for 1980?

Mr. Watson. We may have, but I just absolutely don't remember any specific conversation about the refund check.

Senator Heflin. You have no recollection that Judge Claiborne raised with you the issue and went over the tax return?

Mr. Watson. I don't recall that.

Senator Heflin. All right. Did you have any conversation with—do you remember whether you had any conversation with him concerning the refund, as to whether you advised him to cash the check or not?

Mr. Watson. I don't recall.

Senator Heflin. Do you have any recollection at that time going over schedule D with him?

Mr. Watson. No; I don't.

Senator Heflin. In the testimony at a previous trial, I assume this was the second trial, you testified that included in the aspects of the law practice that Judge Claiborne had that there was some other elements that should be considered such as a large number of accumulated briefs, an extensive file of phone numbers, the firm's telephone number, the value of the cases that were pending at the time, not a dollar value but that they had value, and accounts receivable.

Do you recall discussing with him those various elements in his law practice?

Mr. Watson. If I might expand on that just a moment. The elements that you are picking up there is I believe from a question. It seems like the prosecutor was asking me what items I would use to effect evaluation on that law practice, and I believe that is what that is.

The answer is that Judge Claiborne and I did speak about some of the elements of his law practice. And I spoke to him about some of the elements of the law practice that I thought had value.

Senator HEFLIN. Now, in the discussions that you had about the value of this law practice, were there figures used as to what he felt, himself, the value of the law practice was in regards to offers of sale?

Mr. WATSON. No. I think I might have made some random suggestions or speculations is more what they would have been at that time because I didn't have any physical facts in front of me. But I remember raising, because I know in my own company that to have my list of phone numbers and the list I do business with, and Las Vegas being a city of unlisted phone numbers, per se, I would place a rather significant value just on the Rolodex on my desk that has a large accumulation of phone numbers and access to people.

Senator HEFLIN. Well, was there any valuation of dollars or what perhaps maybe in a discussion with Annette Quintana or James Brown or any of those was?

Mr. WATSON. Yes. As I recall, that there was that we discussed, and I can't tell you the exact meeting. But there was a discussion, as I recall, where Judge Claiborne told me about negotiating to sell the practice and, if I am not mistaken, one of the figures was a half a million dollars and one of them was $750,000 that the negotiations included. And he told me that fell through, or those negotiations, whatever they consisted of, fell through just a few days prior to him going on the bench.

Senator HEFLIN. Did you have any discussion with him that he should have filed this schedule D claiming a loss on his law practice for the year 1979 as well as 1980?

Mr. WATSON. We may have discussed that because I, well, just from a practical standpoint, I believe that he was within the period of time that he could have amended the tax returns.

Senator HEFLIN. Well, that is my next question. Was there any discussion of filing an amended return seeking possibly a refund in 1979 under that concept?

Mr. WATSON. I don't recall that there was. But since I know something, at least that an amended tax return can be done, it is possible we may have touched on that. I can see it as an option now. And I couldn't answer you any more specifically than that.

Senator HEFLIN. Did you or your accountant make any recommendation that there be a refund filed for his 1979 return? Did you discuss that?

Mr. WATSON. I don't recollect that we did have a conversation.

Senator HEFLIN. Now you signed this tax return, and I gather that at the time you signed it it was in pencil.

Mr. WATSON. That is correct.

Senator HEFLIN. Was that a custom, for you to submit for your clients income tax returns to the Internal Revenue Service that were in pencil?

Mr. WATSON. That is my practice.

Senator HEFLIN. You do that.

I believe that is all.

The CHAIRMAN. Senator Sarbanes?

The VICE CHAIRMAN. Mr. Watson, when was the 1980 income tax, Judge Claiborne's 1980 income tax return filed, do you know?

Mr. WATSON. According to the document itself, the Internal Revenue Service received this, the 1980 return--are you saying when was the 1981 return?

The VICE CHAIRMAN. No, the 1980.

Mr. WATSON. The 1980 return was received in Ogden, UT, on June 16, 1981.

The VICE CHAIRMAN. And it is dated June 15, is that correct?

Mr. WATSON. Yes, sir.

The VICE CHAIRMAN. In fact, with a date that you put on it in your own handwriting, but Judge Claiborne signed. Is that correct?

Mr. WATSON. That is my recollection.

The VICE CHAIRMAN. Now, of course, the returns were due April 15. How was it that this return was delayed?

Mr. WATSON. Delayed?

The VICE CHAIRMAN. Beyond April 15?

Mr. WATSON. He requested and received an extension.

The VICE CHAIRMAN. Did you know that at the time, that a request had been made for an extension?

Mr. WATSON. Yes; I knew that an extension had been applied for.

The VICE CHAIRMAN. Did you do that for Judge Claiborne, or did he do it himself?

Mr. WATSON. I previously testified that I don't remember. One or the other of us did it. I am kind of, I am inclined to think Judge Claiborne actually made his own request.

The VICE CHAIRMAN. Let me direct your attention to exhibit No. 32 in the House manager's book of exhibits.

If that could be presented to Mr. Watson.

What is the date on that document, "Application for Extension of Time to File"?

Mr. WATSON. April 13, 1981.

The VICE CHAIRMAN. Now was this document made available to you for your use in preparing the income tax return?

Mr. WATSON. I am not sure. I am inclined to say that if it was we somehow or other misplaced it or it got out of the file because I don't believe the return reflected the additional money he paid at the time he filed for the extension.

The VICE CHAIRMAN. Did you have a conversation with Judge Claiborne about the necessity to file an application for an automatic extension of time?

Mr. WATSON. I don't recall any specific conversation.

The VICE CHAIRMAN. Well, how did you know when you wrote the letter of April 6, exhibit No. 31, that you earlier looked at——

Mr. WATSON. There must have been some discussion that I don't recall.

The VICE CHAIRMAN [continuing]. That you weren't working against an April 15 deadline?

Mr. WATSON. Yes. There must have been some discussion that I don't recall because he obviously filed it, we obviously acted on that information because we filed the return by June 6—June 15. It is just I don't—it is obviously there was some conversation or there was some communication. I just can't remember specifically what it was.

The **Vice Chairman**. Did you know that in that application for an automatic extension that Judge Claiborne had indicated that he expected to owe income taxes for 1980 in the amount of $42,847?

Mr. **Watson**. I don't recall that. I don't recall that I knew that. And it wasn't reported on the tax return, so it is possible that if this document came into my office, I may have not seen it. If it came in, it could have been lost or misplaced. I have lost a few things, and I have forgotten a few things.

As a matter of fact, I gave myself three wake-up calls this morning because I forgot that I had made the other two previously. So I just can't answer the question with any specificity.

He obviously filed it. He paid the money. The return was completed without using that $20,000, which is a credit to him. I don't doubt that he may have sent it to the office. I am not saying; I don't know.

The **Vice Chairman**. But in any event, according to this application, that indicates $42,847, doesn't it?

Mr. **Watson**. That is correct.

The **Vice Chairman**. What amount of taxes did you indicate in the 1980 return that you prepared that Judge Claiborne owed for 1980?

Mr. **Watson**. The return indicates that he gets a $20,927 refund.

The **Vice Chairman**. No. The question was what amount of income tax did the return indicate Judge Claiborne owed for 1980?

Mr. **Watson**. $1,103.

The **Vice Chairman**. $1,103?

Mr. **Watson**. Yes, sir.

The **Chairman**. Senator Warner?

Senator **Warner**. Thank you.

Earlier, the chairman on my behalf asked the questions which elicited your responses; first, that you really did not understand how to fill out form D of the tax return.

Mr. **Watson**. That is obvious.

Senator **Warner**. Now each year millions of Americans fill this form out; most of them without any help from a tax accountant; most of them who can't afford $2,000 to pay for that assistance.

You also added that in your judgment, in response to my question, that Judge Claiborne was a smart man. Now I am trying to project myself into this conversation that you had with Judge Claiborne, when both of you recognized he had a very substantial tax liability; that is, money owing the Federal Government as a consequence of $88,500 fee income.

You didn't understand how to fill out D. My question to you is Did Judge Claiborne indicate to you that he had a knowledge of form D and the difference between capital gains and losses?

Mr. **Watson**. I don't believe that he did. But I don't believe any discussion ever took place relative to his knowledge.

Senator **Warner**. Well, then who came up with the scheme of rolling into form D, really, in my judgment, concealing in form D, $88,500 of earned income?

Mr. **Watson**. Ms. Travaglia.

Senator **Warner**. So the responsibility for devising this scheme then falls solely on the shoulders of one woman, Charlotte Travaglia?

Mr. WATSON. That is the one that I hired to furnish my office with technical information which I relied on.

Senator WARNER. Now do you feel that in preparing these returns you have an obligation to the United States and to the other taxpayers in America to provide a degree of accuracy?

Mr. WATSON. Yes; I do.

Senator WARNER. What is the significance of your signing the return?

Mr. WATSON. To be honest with you, I don't know. It is simply a requirement of the Internal Revenue Service.

Senator WARNER. Did you feel any obligation to the Federal Government in ascertaining the accuracy of this return?

Mr. WATSON. I would say that wasn't the most paramount thing on my mind.

Senator WARNER. No more questions.

The CHAIRMAN. Senator Pressler.

Senator PRESSLER. Now, in your discussions, following Senator Warner's question, did Judge Claiborne question the absence of a schedule C when he received the 1980 return, or in any of these conversations, was there any conversation about the schedule C that is missing?

Mr. WATSON. I don't recall any conversation. It could have happened.

Senator PRESSLER. The attorney for Judge Claiborne said he felt you were the cause of his client's being indicted, as I understood it. Do you agree with that statement?

Mr. WATSON. I am not able to answer exactly why Judge Claiborne was indicted. There were any number of events that led up to it. I don't doubt for a moment that this tax return and my firm played some role in that indictment, nor have I ever tried to sidestep that issue.

Senator PRESSLER. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Gore.

Senator GORE. Mr. Watson, was your fee based upon the amount of the tax payment you saved Judge Claiborne?

Mr. WATSON. Do you mean a percentage?

Senator GORE. Was the size of the refund a factor influencing the amount of money that you were paid for preparing the return?

Mr. WATSON. I couldn't exactly say. The fee was based on what I presumed was correct work which resulted in substantial savings to Judge Claiborne. I presumed that was correct.

Senator GORE. Was the fee established before you determined the size of the refund?

Mr. WATSON. I really can't say.

Senator GORE. Was it common for you to base your fee on the amount of money you were able to save the taxpayer?

Mr. WATSON. That is always a factor, but not the sole basis.

Senator GORE. Was it a factor in this case?

Mr. WATSON. I just answered you. That is always a factor.

Senator GORE. So your fee collected from Judge Claiborne was influenced by the amount of the tax payment you were able to save him?

Mr. **Watson**. All of the fees I charge are influenced in some degree by the size of refund, the time it takes, the amount that is involved.

Mr. Shaw even intimated one time that, I guess like attorneys, it is whatever the traffic will bear.

Senator **Gore**. Now, when you went to his chambers to show him the completed return and told him how much his refund would be, and told him that he would not have to pay taxes for that year, was he pleased at that news?

Mr. **Watson**. I can't recall that there was any special significance. It is a long time ago, a lot of things have happened, and I just don't recall that there was any—there was nothing that sticks in my mind as being extra special significant about the event.

Senator **Gore**. Would you say it was common for persons seeking out your tax preparation services to come because they felt you could save them tax payments compared to other potential tax preparers?

Mr. **Watson**. I wouldn't say so.

Senator **Gore**. Have you had any other clients subjected to criminal prosecutions?

Mr. **Watson**. Not—I don't believe I have.

Senator **Gore**. Have you had any other subject to audits?

Mr. **Watson**. Yes; I have had tax returns subject to audit.

Senator **Gore**. Thank you, Mr. Chairman.

The **Chairman**. Senator Heflin.

Senator **Heflin**. Mr. Watson, a taxpayer comes in who has been paying substantial taxes and Creative Tax Planning, you and your accountants, come up with tax plans to fill out a return which make substantial savings. Did the taxpayer, Judge Claiborne in this instance, ever have any discussion with you either on the refund time or at the filing time or any other time to ask you is this legitimate, can we do it, or any words to that effect?

Mr. **Watson**. No, sir; I don't recall any words to that effect.

Senator **Heflin**. To your knowledge, has it been reported to you that he had this with Ms. Travaglia, or whatever her name is, such a conversation?

Mr. **Watson**. No, sir; I don't recall any conversations.

Senator **Heflin**. You have not been told by her that she discussed it with him, as to whether or not we can do this and that this is legitimate, or that we can, in effect, get by with it?

Mr. **Watson**. I don't recall any conversations along those lines.

Senator **Heflin**. With her or anybody?

Mr. **Watson**. No. If I thought it was an illegal proposition, I wouldn't have done it.

Senator **Heflin**. Well, I mean, just the natural tone of events would be that you would have something different; you would want to discuss it as to whether it would be a legitimate way of doing it if it is different and if you had knowledge that it was different.

Mr. **Watson**. I presumed it was OK.

Senator **Heflin**. All right, let me ask you about the—you say you had this idea about handling this as a capital loss and you discussed it with two Internal Revenue agents, friends of yours. You were there having another audit for another client, and you discussed this with them.

Do you remember when that was in relationship to the filling out of the return?

Mr. **Watson**. I believe that was—I couldn't say for sure. It seems to me the discussion I had with them was after the return was filled out.

Senator **Heflin**. Well, it was so novel and unusual that you therefore felt that you wanted to inquire, or why would you have gone to them to raise this matter? Curiosity there?

Mr. **Watson**. It was after the Portland grand jury.

Senator **Heflin**. Oh, it was after the Portland grand jury.

Mr. **Watson**. I was really concerned about what they were really concerned about.

Senator **Heflin**. So this was after the Government had attempted, or started the grand jury investigation, not at the time of filing or immediately after the filing or in connection with the refund?

Mr. **Watson**. That is as I recollect.

The **Chairman**. You said earlier today, Mr. Watson, that you are still using the name Creative Tax Planning.

Mr. **Watson**. Yes; that is still on my stationery and on the front door.

The **Chairman**. That means you are still in business?

Mr. **Watson**. Yes; I am still in business.

The **Chairman**. You are still preparing tax returns?

Mr. **Watson**. Yes. I have just brought an associate in from New York City. He is an enrolled agent, and he is doing all of our tax work and accounting work presently.

The **Chairman**. How is business?

Mr. **Watson**. I beg your pardon?

The **Chairman**. How is business?

Mr. **Watson**. Well, it is relatively OK.

The **Chairman**. Any further questions of Mr. Watson?

Senator **Pryor**. What is an enrolled agent?

Mr. **Watson**. That is a designation that the Internal Revenue Service awards to accountants, CPA's, that gives them some special privilege or consideration.

Senator **Pryor**. If I might ask just one question, Mr. Chairman. How did you feel, Mr. Watson, how did you feel when Judge Claiborne said to you that you have just gotten me indicted? How did you feel?

Mr. **Watson**. I felt terrible. If, in fact, that is what happened, then a horrible mistake had been made by my firm and by my employee.

Mr. **Goodman**. Mr. Chairman, may I ask one or two questions?

The **Chairman**. Mr. Goodman.

FURTHER REDIRECT EXAMINATION

Mr. **Goodman**. Mr. Watson, you would hire an expert if somebody came in based on your advertisement of the various services you provided. Would that apply to every aspect as advertised?

Mr. **Watson**. Well, Mr. Goodman, that is hard to say. I have always tried to maintain someone in the office who had the basic familiarity with most aspects. If you get involved with a bonding, I refer all the inquiries for bonding to a particular insurance agent. Certain elements of those business transactions I do myself.

Mr. GOODMAN. Mr. Chairman, may I take the witness as though on cross? I think based on the type of questions, it is difficult for me to ask him any questions that are not nonleading. There must be some suggestion in the form of my question in order to get a significant answer.

The CHAIRMAN. I see Mr. Chabraja on his feet. Let's hear what he has to say about that.

Mr. CHABRAJA. You know, Mr. Chairman, I hate not to be courteous to Mr. Goodman, but that happens to all of us when we tender witnesses sometimes on direct and don't like what we hear when he gets cross-examined, and then we want another shot at him and lead him, and it is just not the way it is supposed to be.

Mr. GOODMAN. Mr. Chairman, respectfully, the rules of evidence, at least in the court system, indicate that no witness is anybody's witness. There comes a point in time that I have to make a presentation to this honorable committee about how this tax return was prepared. In order to do that, I have to bring in the tax preparer. I believe that I am entitled to be able to question the tax preparer in a significant manner.

Just because he prepared the taxes doesn't mean to say that we like him as our witness.

The CHAIRMAN. Well, I am going to let you go forward. When I say we are going to let you go forward, I hope you will keep within such reasonable bounds that you are not providing dictation for the witness.

Mr. GOODMAN. I understand.

The CHAIRMAN. We want to hear the witness' answers, not your answers

Mr. GOODMAN. I appreciate that.

Would it be fair to say that you were trying to get business around April of 1981?

Mr. WATSON. Yes, sir; I try to get business every day.

Mr. GOODMAN. And when people come into your office, you try to keep them in your office, do you not?

Mr. WATSON. Yes; I do.

Mr. GOODMAN. And when somebody comes into your office and they ask for an IRA plan, you say you came to the right place, don't you?

Mr. WATSON. That is correct.

Mr. GOODMAN. And you don't have any specialist in your office who does IRA plans, do you?

Mr. WATSON. Yes. I have had an insurance agent that has rented an office from me for—he just terminated. As a matter of fact, I am not particularly fond of IRA plans.

Mr. GOODMAN. But you wouldn't chase some cash-paying customer away who wanted an IRA through Creative Tax Planning, would you?

Mr. WATSON. Most of the time I refer them to the bank.

Mr. GOODMAN. All right, how about Keogh plans?

Mr. WATSON. The same answer.

Mr. **Goodman**. Are you telling this committee that if I came in and I said, Mr. Watson, I want to pay you $5,000 for setting up a Keogh plan, you would say go down to the bank, Mr. Goodman?

Mr. **Watson**. Well, if you came in and insisted that we set you up a Keogh plan, we would try to get it done.

Mr. **Goodman**. Well, I am not insisting. I am just saying that I am willing to pay for it, Mr. Watson. You would take my money, wouldn't you?

Mr. **Watson**. Yes; the circumstances just haven't presented themselves.

Mr. **Goodman**. And if a customer came in and he said, "Geez, I have got a problem with the IRS," wouldn't you say, "I've got just the person who can take care of it for you"?

Mr. **Watson**. I would certainly imply that we could handle it.

Mr. **Goodman**. And did you have an expert who handled IRS audits?

Mr. **Watson**. I have never had an Internal Revenue Service audit that required any expert or outside help.

Mr. **Goodman**. But if a customer came in and he said he was looking for an expert or she said I am looking for an expert to take me through this IRS audit and I am scared to death, you wouldn't turn them away, would you?

Mr. **Watson**. What I am saying to you, Mr. Goodman, is it has been my practice that when a return is audited I personally appear before the Internal Revenue Service to discuss that.

Mr. **Goodman**. OK. And have you ever lost one?

Mr. **Watson**. Oh, yes.

Mr. **Goodman**. And has any IRS auditor ever seen one of your penciled returns and say, my goodness, Mr. Watson, that is unusual?

Mr. **Watson**. No, Mr. Goodman, because it is quite common.

Mr. **Goodman**. OK. So it has never been brought to your attention that it would be an unusual practice for Creative Tax Planning to prepare a return in pencil?

Mr. **Watson**. No, sir. I have never had anyone raise the question except you and these gentlemen.

Mr. **Goodman**. I see. Well, why did that document which was filed with the IRS say on schedule D "type here"?

Mr. **Watson**. I think that Ms. Travaglia had probably planned to have that tax return typed. As I have told you, it is not my practice. And maybe she wanted to have it typed because she wanted to give some special impression to the Judge. Or maybe—I don't know what the reason was. It is just not my practice to do anything with those tax returns except fill them out because most of them are going to go into the grinder as soon as they get through photographing them.

Mr. **Goodman**. Say that again.

Mr. **Watson**. Tax returns, it is my understanding that after the Internal Revenue Service has processed that return, sometime after a 3-year period, it is my understanding that they grind them up.

Mr. **Goodman**. I have nothing further.

The **Vice Chairman** [presiding]. Senator Warner.

Senator WARNER. Mr. Watson, after the discovery of this—first, where is Ms. Travaglia now?

Mr. WATSON. Ms. Travaglia is, I believe, in the audience.

Senator WARNER. Now how long did she remain in the employ of your firm following the filing of this return?

Mr. WATSON. I can't recall. I don't have anything to refresh my memory exactly how long she worked for me. I believe it was about a year.

Senator WARNER. A year? And how long had she been with you prior to the filing of this return?

Mr. WATSON. This is purely speculation, but as I recall, it seems like she went to work in the fall and left—I just can't say. I mean, I can produce that.

Senator WARNER. About how many returns did she prepare during the course of her employ?

Mr. WATSON. I would say in excess of a hundred.

Senator WARNER. Did you ever encounter problems as serious as these with any of the returns that she prepared for your firm?

Mr. WATSON. No; I never encountered any other serious problems.

Senator WARNER. How would you characterize her work?

Mr. WATSON. She seemed to be competent.

Senator WARNER. And you never had any other problems so far as you can recall of a proportion to this one?

Mr. WATSON. Oh, of course not.

The VICE CHAIRMAN. Mr. Chabraja, did you have some questions? Do the managers have further questions?

Mr. CHABRAJA. Very, very few.

RECROSS EXAMINATION

Mr. CHABRAJA. Mr. Watson, Mr. Goodman suggested to you that in April 1981 you were in search of business, and you pointed out to him that you are always looking for business. In connection with your conversations with Judge Claiborne, when he wanted to engage you, did he seek you out?

Mr. WATSON. Yes. He was referred to my office.

Mr. CHABRAJA. All right. And you didn't lie to him at all about your qualifications, did you?

Mr. WATSON. I don't recall discussing my qualifications.

Mr. CHABRAJA. Didn't even have a discussion with him.

Do you recall——

Mr. WATSON. I thought we had a discussion, but my recollection is that it was centered around the filing of his tax return, and I don't recall any discussion about my credentials.

Mr. CHABRAJA. He didn't even ask you about your capability in that area, did he?

Mr. WATSON. I don't recall that he did.

Mr. CHABRAJA. And you didn't do anything to hold yourself out in a chesty way as being a tax expert, did you?

Mr. WATSON. No more than normal.

Mr. CHABRAJA. And you——

Senator RUDMAN. I would like to have that answer again. I didn't hear what he said.

Mr. CHABRAJA. No more than normal, I think.

The VICE CHAIRMAN. Let the witness give the answer again. What was your answer, Mr. Watson?

Mr. WATSON. I told him that I didn't do anything no more than normal in my first meeting with Judge Claiborne. To answer your question, I try to put forth as well as I can whatever seems to be appropriate relative to your situation that you can do business with me and it should be good for both of us.

Mr. CHABRAJA. One of the distinguished Senators put to you a question, and I don't recall which, about the capabilities of Judge Claiborne, and you testified that he was as intelligent a person as you knew but, in your opinion, just OK as a businessman.

Mr. WATSON. He didn't demonstrate a very distinguished track record in the area of business.

Mr. CHABRAJA. Well, he did all right on that real estate transaction, didn't he? Made an awful lot of money on that one?

Mr. WATSON. He owned the property for an awful long time.

Mr. CHABRAJA. I want to know, did he make some money on it or didn't he?

Mr. GOODMAN, Mr. Chairman, I would submit that the witness be permitted to complete the answer.

Mr. CHABRAJA. He should be directed to respond directly to the question, not tell a story.

The VICE CHAIRMAN. Mr. Watson, if you would answer the question.

Mr. WATSON. Yes, he made a profit on that real estate transaction.

Mr. CHABRAJA. All right. Mr. Watson, I think the point I am getting to is the judge was a highly intelligent man and whatever your view of his merits as a businessman, there is one thing he sure wasn't, right, and that is naive? He was not a naive human being, was he?

Mr. WATSON. I have already addressed the issue that Judge Claiborne is a very intelligent attorney. And he may not be naive, but he is certainly, from what I have observed, not the best businessman I ever met.

Mr. CHABRAJA. But you agree with me that he is absolutely not naive?

Mr. WATSON. The degree of naivete is relative to the area that you are directing your question to.

Mr. CHABRAJA. Can you answer my question?

Mr. WATSON. I think Judge Claiborne was rather naive when it came to business. When it came to handling his own business affairs, he appeared to pay very little attention to it. I don't know if that is naive or lack of paying attention to it. It is just what I observed.

Mr. CHABRAJA. Or maybe an absence of care?

Mr. WATSON. My observation is just as I have stated it.

Senator HEFLIN. Mr. Chairman, may I ask one question?

The VICE CHAIRMAN. Senator Heflin.

Senator HEFLIN. At the second trial, Judge Claiborne testified—I am reading from page 981 of the transcript—"I got the impression from Mr. Watson. I know that he told me he had two experienced accountants, one of whom had been a CPA in Arizona and that she had done the major portion of the work on my return."

I will ask you did you make those statements contained in that answer to Judge Claiborne?

Mr. WATSON. I don't recall. Is that my testimony?

Senator HEFLIN. No; that is Judge Claiborne's testimony, that you told him.

Mr. WATSON. That is possible.

Senator HEFLIN. Well, did you have anyone that had been a CPA in Arizona on your staff?

Mr. WATSON. Not on my staff, but I am sure I have discussed the thing with other people. I just can't specifically——

Senator HEFLIN. Well, who is the CPA from Arizona that you discussed it with?

Mr. WATSON. I don't recall.

Senator HEFLIN. Well, where did—you don't live in Arizona, do you?

Mr. WATSON. Well, we just live across the river.

Senator HEFLIN. Where you live is close to Arizona? I am not too familiar with that section of the country.

But you are saying that you could have. Who would it have been, if you could have?

Mr. WATSON. Well, I was trustee of the Arizona Baptist Foundation at one time.

Senator HEFLIN. I didn't ask you that. Who was the CPA that it could have been that you said that you had on your staff that was——

Mr. WATSON. I can't answer the question.

Senator HEFLIN. Well, you stated that one of them—this is his testimony, I am just asking you.

Mr. WATSON. OK.

Senator HEFLIN. "I got the impression from Mr. Watson. I know that he told me he had two experienced accountants, one of whom had been a CPA in Arizona and that she had done the major portion of the work on my return."

Now I am asking you who would that have been if you say that you don't recall and that you stated that you could have testified to that, that you could have told him that. Who would it have been?

Mr. WATSON. I don't know.

The VICE CHAIRMAN. Mr. Watson, how did Judge Claiborne come to be your client? How did that happen?

Mr. WATSON. He was referred to my office by another person I had done income tax returns for that he had formerly been married to.

The VICE CHAIRMAN. Did Judge Claiborne call you up and tell you he wanted to come to see you about doing his income tax work?

Mr. WATSON. He called up and made an appointment to discuss some aspect of his tax return, as I recall.

The VICE CHAIRMAN. Do you recall when that was?

Mr. WATSON. Not specifically. It was sometime prior to April 6, the date that I wrote him a letter. So it was probably 2 or 3 days before that, or maybe as much as a week.

The VICE CHAIRMAN. Well, I think earlier you testified that you had a discussion with him in March 1981, is that correct?

Mr. WATSON. My recollection of the events is it was in the spring. It could have been the end of March. But I am fairly sure I would have responded within 7 or 8 days, and I wrote him the letter on the 6th, so it could have been the end of March.

The VICE CHAIRMAN. But Judge Claiborne sought you out?

Mr. WATSON. I beg your pardon?

The VICE CHAIRMAN. Judge Claiborne sought you out in order to have an appointment with you, is that correct?

Mr. WATSON. That is correct.

The VICE CHAIRMAN. That took place at your office?

Mr. WATSON. Yes.

The VICE CHAIRMAN. Did he indicate to you why he had come to you?

Mr. WATSON. Yes. He told me about the sale of this piece of property, and that someone had advised him that there was a very significant, or a tax liability of some amount. I guess at the very first minute I said, well, there probably is but there is an awful lot of things that you can use to adjust the profit that you make on the sale of your personal residence, among which you are over 55 years old and you purchased another residence, so you can rollover your profit into the next residence.

I can't exactly recollect that exact conversation. But if you were asking me today that same question, if you came in to talk about it, that is what I would tell you. I don't know that you are over 55, but I would ask you.

The VICE CHAIRMAN. Now did you have any communications with Mr. Wright or his office since you were succeeding him as Judge Claiborne's tax preparer?

Mr. WATSON. No, I don't think so.

The VICE CHAIRMAN. You obtained the earlier tax returns from Judge Claiborne?

Mr. WATSON. That is correct.

The VICE CHAIRMAN. Did Judge Claiborne indicate to you why he was changing tax preparers?

Mr. WATSON. No, he didn't. I sort of got the impression that—he didn't have to tell me why he was changing tax preparers. When someone comes in to me that has been filing income tax, I can just assume that for some reason they are not doing business with the prior preparer.

Actually, my recollection of it was—come to think about it, it seems to me I probably thought the guy retired. But it is just speculation.

The VICE CHAIRMAN. Did the judge indicate to you that he understood that you were creative in the tax area and that since he had this problem he had decided to come to you to seek your advice and counsel?

Mr. WATSON. I don't recall that that was said.

The VICE CHAIRMAN. Did you assume that might be the case?

Mr. WATSON. Well, like I say, the person who referred him to me must have implied that she was satisfied with the quality of work that I had done for her and her family. So I imagine he came in under the presumption, or relying on what he was told by the person who had referred him to me.

The VICE CHAIRMAN. Any other questions?

Well, you may step down, Mr. Watson.

(Witness excused.)

Senator WARNER. Mr. Chairman, I assume that this witness will be available for further examination by this committee, particularly following the testimony that is to be offered by one Charlotte Travaglia.

The VICE CHAIRMAN. Well, I was about to ask counsel whether they wished to have the witness continue to make himself accessible. But if it is the desire of a member of the committee that he——

Senator WARNER. It is my desire and I make that request.

The VICE CHAIRMAN. Very well.

Senator RUDMAN. I join Senator Warner in that request.

The VICE CHAIRMAN. Mr. Watson, you are excused, but you will continue to be subject to the call of the committee.

Mr. WATSON. Thank you.

The VICE CHAIRMAN. Mr. Goodman, if you will call your next witness.

Mr. GOODMAN. The next witness is Mr. Lawrence Semenza.

The VICE CHAIRMAN. Mr. Semenza, if you would come forward, please.

Mr. GOODMAN. Mr. Chairman, I advise the Chair that the reason I am calling Mr. Semenza is we are taking him out of order and feel that in order to have an orderly presentation as far as a major witness, in the nature of Ms. Travaglia, that it would be best to start her testimony sometime tomorrow so we can have her testify in a continuum.

Senator GORE. Mr. Chairman, does the committee have any discretion on this matter? It would seem of some value to those of us who have been following the matters just testified to to be able to hear Ms. Travaglia at this point. If the committee has any discretion in that regard, to stay with the schedule as it was originally established, I think it might make for an orderly record.

But I understand that counsel has an interest in deciding the sequence of his own witnesses. But I would just state a preference for hearing Ms. Travaglia at this point.

Senator WARNER. I would join and associate myself with the Senator from Tennessee.

Mr. GOODMAN. Mr. Chairman, I have no objection to calling Ms. Travaglia. I was just concerned because I was advised there was a 6 o'clock time limit and that would only give her 8 minutes on the witness stand today.

Senator GORE. Are we going to go past 6 o'clock?

Mr. GOODMAN. If we go past 6, then I certainly could put her on the stand.

The VICE CHAIRMAN. I would say to you, Mr. Goodman, there is no 6 o'clock time that has been fixed to end, although we are subject, of course, at any moment to the possibility of a vote either in the Senate or in the House. We have no way of controlling when a vote may come, but we do not have a 6 o'clock adjournment time.

Senator RUDMAN. Mr. Chairman, I think the only problem that may be existing here is that Senator Mathias, I think, announced earlier, about an hour and a half ago, that we will go to 6 because a number of us had to change appointments that were made for late afternoon. So a number of people I know had planned on other things at 6 o'clock.

On that basis, I am sure we can make other changes, but it may be more convenient to follow the schedule that the Chairman had originally set forth. I believe that the Vice Chairman was not in the room when Senator Mathias made that statement; it was just before we started this afternoon.

The CHAIRMAN [presiding]. We understand that the House doesn't want to sit beyond 6:30, and I don't think that Members of the Senate who have other engagements are also in some difficulty. So I think it is probably not useful to call Ms. Travaglia tonight.

Mr. GOODMAN. As I said, whatever the Chair or the committee desires. I am ready either way.

The CHAIRMAN. Under the previous arrangements, we will meet at 1 o'clock. Now let me ask all members to be as prompt as possible at 1 o'clock, and with the idea that we will make a lot of ground tomorrow afternoon.

Tomorrow, we can run through—perhaps, Mr. Chairman, arrangements can be made on the House side that we can stay a little later than 6 tomorrow and accomplish a full day's work in half a day.

Senator HEFLIN. Mr. Chairman, for the record, I would not want to associate myself with remarks as to the calling of the witnesses. I think it is counsel's prerogative to call the witnesses in the order that he wants to and to present his own case in that manner.

I think that is particularly true in regards to this particular committee because this committee makes no recommendation as a committee and that we are just as individual Senators. Individual Senators no different from the Senators who are not here in regard to decisionmaking. So I don't think it accommodates that. I think that counsel has a right to try his lawsuit as he might want to.

The CHAIRMAN. We will then stand in adjournment—or in recess until the hour of 1 tomorrow.

(Whereupon, at 5:55 p.m., the committee was recessed, to reconvene at 1 p.m., Thursday, September 18, 1986.)

SENATE IMPEACHMENT TRIAL COMMITTEE

Appointed Upon the Adoption of Senate Resolution 481, August 14, 1986, 99th Congress, 2d Session, Pursuant to Rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials

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THURSDAY, SEPTEMBER 18, 1986

U.S. SENATE,
SENATE IMPEACHMENT TRIAL COMMITTEE,
Washington, DC.

The committee met, pursuant to notice, at 1:33 p.m., in room SR-325, Russell Senate Office Building, Hon. Charles McC. Mathias, Jr., chairman of the committee, presiding.

Present: Senators Mathias, Sarbanes, Bingaman, Pryor, DeConcini, Heflin, Warner, Rudman, Pressler, Hatch, and McConnell.

Managers and counsel from the House of Representatives present: Peter W. Rodino, Jr.; Robert W. Kastenmeier; William J. Hughes; Romano L. Mazzoli; Dan Glickman; Hamilton Fish, Jr.; Henry J. Hyde; Michael DeWine; Nicholas D. Chabraja, special counsel; and David DeBruin, associate special counsel.

House Judiciary Committee staff present: M. Elaine Mielke, general counsel; Alan F. Coffey, Jr., associate general counsel; Judith Bailey, counsel; Daniel M. Freeman, counsel; Gary Goldberger, counsel; Warren S. Grimes, counsel; Joseph V. Wolfe, counsel; and Jonathan R. Yarowsky, counsel.

Respondent and counsel present: The Hon. Harry E. Claiborne; Oscar Goldman, counsel; Senator Howard Cannon, counsel; Michael V. Stuhff, associate counsel; and David Z. Chesnoff, associate counsel.

Staff present: Michael Davidson, counsel; Floyd M. Riddick, consultant; John B. Childers, staff director; John F. Rixey, Jr., deputy staff director; Anthony L. Harvey, clerk; Byron F. Hoover, assistant clerk; Gerald R. Gereau, security coordinator; Ann Pincus, press liaison; and Randy Dove, press liaison.

The CHAIRMAN. Will the managers on the part of the House call their next witness—Mr. Goodman, your next witness.

Mr. GOODMAN. Our next witness will be Charlotte Travaglia.

The CHAIRMAN. It will be noted that the Senator from Tennessee, Mr. Gore, is absent. He is necessarily absent because he is attending a funeral in Tennessee.

Ms. Travaglia, before you sit down, will you raise your right hand? Do you swear that the evidence that you will give in this impeachment proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. TRAVAGLIA. I do.

DIRECT EXAMINATION

Mr. GOODMAN. Please state your name and spell your last name for the record.

Mrs. TRAVAGLIA. Charlotte Travaglia, T-r-a-v-a-g-l-i-a.

Mr. GOODMAN. Mr. Chairman, may I inquire of the Chair as to whether or not the mike is on? Are you able to hear Ms. Travaglia?

The CHAIRMAN. We will ask the technicians to check the sound system.

Mr. GOODMAN. With the Chair's permission, I will also retrieve from the clerk certain exhibits. Thank you.

The CHAIRMAN. While they are hooking up the microphone for the witness, can you describe the exhibits that you are about to use, Mr. Goodman?

Mr. GOODMAN. Yes. For purposes of Ms. Travaglia, we will have Exhibit Respondent's No. 10 and House 27.

The CHAIRMAN. Mr. Goodman, even in the most powerful Nation in the world, some things are difficult.

Mr. GOODMAN. Even with the most powerful people.

The CHAIRMAN. Well, it may prove the fallacy of that assumption.

Mr. GOODMAN. Please state your name and spell your last name for the record.

Mrs. TRAVAGLIA. Charlotte Travaglia, T-r-a-v-a-g-l-i-a.

Mr. GOODMAN. And is it Ms. or Mrs. Travaglia?

Mrs. TRAVAGLIA. Mrs.

Mr. GOODMAN. Mrs. Travaglia, where do you reside?

Mrs. TRAVAGLIA. Las Vegas.

Mr. GOODMAN. And how long have you lived in Las Vegas, NV?

Mrs. TRAVAGLIA. Six years.

Mr. GOODMAN. Did there come a time when you were employed by a firm owned by Jerry Watson?

Mrs. TRAVAGLIA. Yes.

Mr. GOODMAN. When were you so employed?

Mrs. TRAVAGLIA. September 1979 to April of 1982.

Mr. GOODMAN. And in what capacity were you hired?

Mrs. TRAVAGLIA. A clerk.

Mr. GOODMAN. What type of clerk?

Mrs. TRAVAGLIA. Bookkeeping, taking care of client books and to do various tax returns.

Mr. GOODMAN. What type of educational experience had you had before you went to work for Mr. Watson?

Mrs. TRAVAGLIA. I have 3 years accounting, 30 years of retail, wholesale, nonprofit bookkeeping.

Mr. GOODMAN. And you have described what your duties and responsibilities were when you were employed by Mr. Watson; is that correct?

Mrs. TRAVAGLIA. Yes. Bookkeeping, several small accounts, posting cash receipts, cash disbursements, preparing profit-and-loss statements.

Mr. GOODMAN. All right. Could you characterize for the honorable committee Mr. Watson's role as far as the day-to-day affairs in the accounting business?

Mrs. **Travaglia**. I am not aware that he did anything in the accounting business other than interview certain taxpayers or interviewing real estate clients, of which I had nothing to do with.

Mr. **Goodman**. All right. Could you characterize the way he held himself out to the public?

Mrs. **Travaglia**. Exalted.

Mr. **Goodman**. Exalted in any particular area or was it an unlimited exaltation?

Mrs. **Travaglia**. Well, in that he knew what he—at least he professed to know what he was doing in all areas.

Mr. **Goodman**. And have you heard him in conversation with the clientele?

Mrs. **Travaglia**. Occasionally.

Mr. **Goodman**. And how would you characterize his manner?

Mrs. **Travaglia**. Assured, as if he knew what he were saying.

Mr. Goodman Do you know Norma Reis?

Mrs. **Travaglia**. Yes.

Mr. **Goodman**. Who is Norma Reis?

Mrs. **Travaglia**. I understood, Judge Claiborne's ex-wife, but I did not know that at the time.

Mr. **Goodman**. And how do you know Norma Reis?

Mrs. **Travaglia**. I prepared her tax return.

Mr. **Goodman**. Did you have any type of prolonged activity as far as she was concerned?

Mrs. **Travaglia**. No. I interviewed her for the tax prep and asked for whatever information was necessary in preparing her tax return, prepared it, typed it, and gave it to her.

Mr. **Goodman**. And you did this while you were in the employ of Jerry Watson; is that correct?

Mrs. **Travaglia**. Yes.

Mr. **Goodman**. It was a typed return?

Mrs. **Travaglia**. To my knowledge now, yes. I tried to have everything typed, or at least put in pen.

Mr. **Goodman**. Now, do you know Harry Claiborne?

Mrs. **Travaglia**. I did not, no. I had never met him. I did not know what he——

Mr. **Goodman**. Do you see him in the chambers?

Mrs. **Travaglia**. Yes, I do.

Mr. **Goodman**. Could you point him out, please?

Mrs. **Travaglia**. Second from the left.

Mr. **Goodman**. Have you ever had a conversation face to face with him?

Mrs. **Travaglia**. After he had been convicted, hello, how are you.

Mr. **Goodman**. But prior to that time?

Mrs. **Travaglia**. I had never met him.

Mr. **Goodman**. Did you ever have a conversation with him over the telephone?

Mrs. **Travaglia**. No.

Mr. **Goodman**. Did there come a time that you had the occasion to work on a tax return for Harry Claiborne?

Mrs. **Travaglia**. Well, I did not know who he was, but I was handed a stack of tax information and told to work up worksheets, preliminary work.

Mr. GOODMAN. All right. Now, you have in front of you what has been marked for identification as Respondent's Exhibit 10—have you seen that document before?

Mrs. TRAVAGLIA. Yes.

Mr. GOODMAN. When did you first see it, to the best of your recollection?

Mrs. TRAVAGLIA. When the Justice Department called me in and asked me had I prepared this.

Mr. GOODMAN. Did you in fact work on that document at any point in time?

Mrs. TRAVAGLIA. Yes. My handwriting is above No. 4 in that I pointed out that dividends were not dividend income but interest income, corrected that, that there was ditto also other interest income that needed to be included.

Mr. GOODMAN. Now, you are referring to what page of the document?

Mrs. TRAVAGLIA. Page 1.

Mr. GOODMAN. When you were given the document, was it a multipage document?

Mrs. TRAVAGLIA. Well, I had a stack, a stack of information, and I do not remember what all I had.

Mr. GOODMAN. All right. Do you recall whether or not you caused any other writing to appear on the first page of that document?

Mrs. TRAVAGLIA. Five and six is my handwriting.

Mr. GOODMAN. All that is contained in five and six is in your hand?

Mrs. TRAVAGLIA. Yes.

Mr. GOODMAN. Would you please look through the remainder of the document and see whether or not your writing appears thereon?

Mrs. TRAVAGLIA. The bookmaker tick, which is the little upside down X.

Mr. GOODMAN. Now, where is that, so the committee members——

Mrs. TRAVAGLIA. Alongside of $8,054, the first figure. That is mine.

Mr. GOODMAN. What page would that be?

Mrs. TRAVAGLIA. That is page 2.

Mr. GOODMAN. All right. You say you placed the tick there.

Mrs. TRAVAGLIA. Which means that I copied that work.

Mr. GOODMAN. All right.

Mrs. TRAVAGLIA. The second, the same.

Mr. GOODMAN. All right. Any place else?

Mrs. TRAVAGLIA. Under alimony, there is a bookkeeper tick. I copied it.

Mr. GOODMAN. Any place else?

Mrs. TRAVAGLIA. Ditto the second figure, which is $13,080.

Mr. GOODMAN. All right.

Mrs. TRAVAGLIA. I corrected taxes on real estate property. Apparently, there was, in addition to the figure that was in here, $3,101.40, apparently there was $726 more to be included. That is my writing.

Mr. GOODMAN. All right.

Mrs. TRAVAGLIA. The second line, apparently, had $252 more to be included. And on the bottom, I have 1, 2, 3, and 4.

Mr. GOODMAN. Is that in your handwriting?

Mrs. TRAVAGLIA. Yes, it is.

Mr. GOODMAN. All right. And how about the——

Mrs. TRAVAGLIA. These belong with what would be schedule C income.

Mr. GOODMAN. All right. And you had that particular piece of paper in front of you when you were working on the tax return for Judge Claiborne?

Mrs. TRAVAGLIA. Apparently, yes.

Mr. GOODMAN. Do you have any independent recollection as to whether or not you had that in front of you?

Mrs. TRAVAGLIA. Well, I really do not remember. I do know my own writing.

Mr. GOODMAN. All right. And it was used in the preparation of the work sheets?

Mrs. TRAVAGLIA. Yes, sir.

Mr. GOODMAN. All right. Ms. Travaglia, did you have the occasion to have any conversations with Mr. Watson while you were doing the work in preparation of the tax return?

Mrs. TRAVAGLIA. Well, if we go back to the first page, yes.

Mr. GOODMAN. All right. And what did you say to Mr. Watson? Well, let me lay a better foundation.

When did you speak to Mr. Watson?

Mrs. TRAVAGLIA. Almost right away.

Mr. GOODMAN. All right. Where did you speak to him?

Mrs. TRAVAGLIA. In the hallway when he handed me a stack of this work to work up into a work sheet form.

Mr. GOODMAN. Was there anybody else present?

Mrs. TRAVAGLIA. No.

Mr. GOODMAN. Was there anything in addition to the yellow sheets of paper which constitute exhibit No. 10 for identification that he handed you?

Mrs. TRAVAGLIA. Not to my knowledge.

Mr. GOODMAN. All right. Did you ever have any other material provided to you in preparing Judge Claiborne's return?

Mrs. TRAVAGLIA. Not to my knowledge.

Mr. GOODMAN. All right. And what conversation did you have with Mr. Watson?

Mrs. TRAVAGLIA. Something was told to me about a very large loss.

Mr. GOODMAN. All right.

Mrs. TRAVAGLIA. And I do not recall the conversation, only in that there were large losses and that I should do so and so and so. And I do not remember what I should have done, but I did what I was told, as a rule.

Mr. GOODMAN. All right. And did you in fact work on the preparation of the work sheets for the tax return?

Mrs. TRAVAGLIA. Yes.

Mr. GOODMAN. Did there come times that you would write memoranda or questions to Mr. Watson seeking his help in the preparation of the return?

Mrs. Travaglia. Yes. On the first page of 10, I asked what about Pioneer Savings and Loan. Apparently, there were savings there. What about the interest earned?

Mr. Goodman. All right. And did Mr. Watson respond to you?

Mrs. Travaglia. No.

Mr. Goodman. Did you have other times that you asked Mr. Watson for advice?

Mrs. Travaglia. Yes.

Mr. Goodman. All right. And did he respond to you?

Mrs. Travaglia. No.

Mr. Goodman. And when I——

Mrs. Travaglia. Only in to tell me I will get to it later or we will speak later.

Mr. Goodman. All right. Did you have an opinion at the time that you were working on the work sheets as to who was going to be responsible for the preparation of the return?

Mrs. Travaglia. I was not confused in the least. It was Mr. Watson's client.

Mr. Goodman. And you were working up——

Mrs. Travaglia. Purely doing preliminary work.

Mr. Goodman. All right. Now, I am going to ask you to look at exhibit No. 27 of the House Managers' exhibits. Can you describe that document after you have a chance to look through it?

Mrs. Travaglia. The entire tax return?

Mr. Goodman. Yes.

Mrs. Travaglia. Well, it is standard procedure when you are working up a tax return to use the actual form. That way when they are typed and finished, the secretary would know what form to put them on.

Mr. Goodman. Well, were you of the impression that that was a final tax return when you were working on it?

Mrs. Travaglia. Absolutely not.

Mr. Goodman. Were you of the impression that something would be done to that document after you——

Mrs. Travaglia. Absolutely I was.

Mr. Goodman. After you got finished with the preparation of those items, what did you do with that document?

Mrs. Travaglia. Well, after all of this was finished, the one problem that bothered me more than anything, more than even the schedule D, was the fact that there was a large refund. It is not customary; this was obviously a professional man, and it is not customary to have a $22,000 refund. You just do not do that. Certainly there are better places to put it, the money, rather than leave it with the IRS.

Mr. Goodman. All right. And did you in fact bring this to Mr. Watson's attention?

Mrs. Travaglia. I tried.

Mr. Goodman. And would he listen to you?

Mrs. Travaglia. Only in that he said, "I will look into it later."

Mr. Goodman. All right. Now, as to Schedule D, would you please turn to that.

Did you intend for that schedule to be a finished product?

Mrs. Travaglia. Absolutely not.

Mr. Goodman. Did you write in your hand the notation——

Mrs. Travaglia. That is my handwriting.

Mr. Goodman [continuing]. "Type here?"

Mrs. Travaglia. That is my handwriting.

Mr. Goodman. Would you read what the reference to "type here" referred to?

Mrs. Travaglia. Accounts receivable for law practice left upon letter of confirmation to judicial something court appointment 1978.

Mr. Goodman. All right. And you expected certain information to be typed on the tax return; is that correct?

Mrs. Travaglia. Well, I expected it to be corrected. Accounts receivable are to write off.

Mr. Goodman. Did you tell Mr. Watson that?

Mrs. Travaglia. No. No, not in so many words. I just said it is not correct.

Mr. Goodman. All right. And after you got through making your notations on the work sheet, as you characterize it, what did you do with the work sheet?

Mrs. Travaglia. Bundled everything up that he had given me, put a rubber band around it, and put it on his desk.

Mr. Goodman. All right. So that would include not only the work sheet for the 1980 return, but also the yellow pieces of paper which you referred to?

Mrs. Travaglia. Well, it was my practice when I interviewed the tax client that each and every piece that we prepared or I prepared be made part of our file for future reference.

Mr. Goodman. Did you have any directions whatsoever from Judge Claiborne as far as how the return should be prepared?

Mrs. Travaglia. I had never met Judge Claiborne. I did not know who he was. The name meant nothing.

Mr. Goodman. Did you intend for your work product to be filed with the IRS in that form?

Mrs. Travaglia. Never.

Mr. Goodman. All right. Was it your policy to have the tax returns which you worked on typed or hand-printed in pencil?

Mrs. Travaglia. Never in pencil. I did my level best to get mine that I had prepared typed or at least in pen.

Mr. Goodman. All right. And how many returns did you prepare, if you can recall, when you were in the employ of Mr. Watson?

Mrs. Travaglia. That I had interviewed?

Mr. Goodman. Yes.

Mrs. Travaglia. Personally interviewed? Perhaps 300, 400.

Mr. Goodman. All right And in your particular instance, you did your best to have those returns typed; is that right?

Mrs. Travaglia. Yes, and documented.

Mr. Goodman. All right. Did there come a time that you were contacted by either an IRS agent or the FBI?

Mrs. Travaglia. Yes.

Mr. Goodman. When was that?

Mrs. Travaglia. Approximately 1983.

Mr. Goodman. And where were you contacted?

Mrs. Travaglia. In my office.

Mr. Goodman. Is that in the Watson location?

Mrs. **Travaglia**. No. I had an office at the Stearns Building, which has since been torn down.

Mr. **Goodman**. All right. But that was a location separate and apart from that of Mr. Watson?

Mrs. **Travaglia**. Oh, yes. Yes.

Mr. **Goodman**. And do you know who spoke with you on that occasion?

Mrs. **Travaglia**. Mr. Jesinger and Mr.—it might have been Skelton. I am not certain of the second person.

Mr. **Goodman**. All right. But you say that the first person was Mr. Jesinger?

Mrs. **Travaglia**. Positively.

Mr. **Goodman**. And perhaps Mr. Skelton?

Mrs. **Travaglia**. Perhaps.

Mr. **Goodman**. And when they came into your office, did they identify themselves?

Mrs. **Travaglia**. I was not there. They did identify themselves to my secretary.

Mr. **Goodman**. OK. And did you ultimately meet with them?

Mrs. **Travaglia**. Yes.

Mr. **Goodman**. Where?

Mrs. **Travaglia**. At the Federal Building. I was just catercorner from the Federal Building.

Mr. **Goodman**. OK. You walked over to the Federal Building?

Mrs. **Travaglia**. Yes.

Mr. **Goodman**. And you went where?

Mrs. **Travaglia**. To, I think it is the second floor of the FBI.

Mr. **Goodman**. All right. And who was present when you spoke with them?

Mrs. **Travaglia**. At that time. Mr. Jesinger and probably Mr. Skelton.

Mr. **Goodman**. All right.

Mrs. **Travaglia**. And perhaps another person.

Mr. **Goodman**. And what were you told?

Mrs. **Travaglia**. Had I been employed by Mr. Watson during the years or something, something.

Mr. **Goodman**. All right.

Mrs. **Travaglia**. My first statement was, "What did Mr. Watson do now?"

Mr. **Goodman**. And why did you say that?

Mrs. **Travaglia**. Well, because there had been other problems.

Mr. **Goodman**. All right. And were you concerned about being visited by the Federal agents?

Mrs. **Travaglia**. Oh, sure. It frightened me.

Mr. **Goodman**. Why were you frightened?

Mrs. **Travaglia**. Well, I never signed anything while I was with Mr. Watson, but just as this is, I was afraid of what could come about.

Mr. **Goodman**. As a result of being associated with Mr. Watson?

Mrs. **Travaglia**. Yes.

Mr. **Goodman**. All right. And did there come a time that Judge Claiborne's attorneys attempted to speak to you about your participation as far as the preparation of these documents?

Mrs. **Travaglia**. Yes.

Mr. GOODMAN. And what was your position, as far as you were concerned?

Mrs. TRAVAGLIA. Well, I thought I was at that time a subpoenaed witness for the Justice Department, and that I should not talk to you.

Mr. GOODMAN. And did you in fact refuse to talk to me in a—you know—a nice way?

Mrs. TRAVAGLIA. Pretty much so.

Mr. GOODMAN. Now at the time that you had your interview with Mr. Jesinger, did you tell him that you must have had other documents, or worksheets, other than the yellow pieces of paper which are contained in Exhibit 10?

Mrs. TRAVAGLIA. Well, I felt that there had to be more. I'm fully aware of, of this accounts receivable being dropped out here, was that deferred income that later on was to be recaptured. I don't know. I just know that I felt that there had to be more worksheets.

Mr. GOODMAN. All right. And you told him that, did you not?

Mrs. TRAVAGLIA. I believe I did, yes.

Mr. GOODMAN. Did you also tell him that you were not—did you tell him, or describe to him, what your familiarity was with the IRS rules and regulations?

Mrs. TRAVAGLIA. I guess. I mean, I don't remember if I was questioned.

Mr. GOODMAN. Do you feel that you were familiar with IRS rules and regulations while you were in the employ of Mr. Watson?

Mrs. TRAVAGLIA. Yes, somewhat.

Mr. GOODMAN. All right.

Mrs. TRAVAGLIA. I mean as much as all of us are. They change from year to year.

Mr. GOODMAN. All right. Mr. Chairman, may I approach the witness. I would like to show her, for purpose of refreshing her recollection, an FBI 302 form taking place on an investigation on June 17, 1984.

The CHAIRMAN. You may.

Mr. GOODMAN. Thank you. I would like you to see the first, the second full paragraph, and see whether or not that refreshes your recollection, without reading it out loud. Just see whether it refreshes your recollection as to what you told the FBI or IRS about your knowledge of Internal Revenue Service rules and regulations.

Mrs. TRAVAGLIA. Well, this is absolutely correct. When I first went to work for Jerry, I did tell him that I would prefer to have someone there that was totally cognizant and aware of all new regulations, and this is absolutely correct, what I've said.

Mr. GOODMAN. Was it your opinion, at the time, that you did not have the necessary knowledge in order to prepare a final tax return which would be acceptable to the IRS?

Mrs. TRAVAGLIA. Well, it would depend on what kind of a tax return. The normal, average, everyday tax return, no problem. Something that involved making the distinction between ordinary deferred, earned, so on and so forth, sometimes, I felt that I wanted qualification on it——

Mr. GOODMAN. All right. Now——

Mrs. TRAVAGLIA [continuing]. For a corporate return.

Mr. **Goodman**. Did you prepare these worksheets in the same manner as you prepared other returns in the office?

Mrs. **Travaglia**. Yes.

Mr. **Goodman**. Was it given any special significance because it was Judge Claiborne's return?

Mrs. **Travaglia**. Not on my part. I did not know who it was.

Mr. **Goodman**. So you treated it as though you would be treating any other taxpayer that you had no knowledge about?

Mrs. **Travaglia**. I did, indeed.

Mr. **Goodman**. And when you gave the worksheets to Mr. Watson, how did you deliver it?

Mrs. **Travaglia**. I just wrapped—it, it was sort of voluminous, in that there were several pieces. I just put a rubberband around all of it and placed it back on his desk.

Mr. **Goodman**. All right. And did you place it on his desk along with other files?

Mrs. **Travaglia**. There were several other files there, yes.

Mr. **Goodman**. All right. And once again, you never intended this to be filed?

Mrs. **Travaglia**. Absolutely not.

Mr. **Goodman**. May I have the Chair's indulgence, please.

[Pause.]

Mr. **Goodman**. I have no further questions.

The **Chairman**. Mr. Chabraja.

CROSS-EXAMINATION

Mr. **Chabraja**. Mr. Chairman. Good morning, Mrs. Travaglia.

Mrs. **Travaglia**. Good morning.

Mr. **Chabraja**. How are you?

Mrs. **Travaglia**. Good.

Mr. **Chabraja**. Mrs. Travaglia, if I understand your direct testimony correctly, it was your perception that your duties in connection with the work on Judge Claiborne's return were clerical in nature?

Mrs. **Travaglia**. Yes.

Mr. **Chabraja**. And you did not have any meetings with the client, Judge Claiborne, during the course of your work?

Mrs. **Travaglia**. No, sir.

Mr. **Chabraja**. And you did not talk——

Mrs. **Travaglia**. I had never met him.

Mr. **Chabraja**. OK. And you did not talk with him by telephone?

Mrs. **Travaglia**. No; I did not.

Mr. **Chabraja**. And if I understood you, you received your instructions from Mr. Watson?

Mrs. **Travaglia**. I did, indeed.

Mr. **Chabraja**. OK. If you would be kind enough to turn to the income tax return for 1980, which we have in front of you, and has previously been admitted into evidence as House exhibit 27, I would like to direct your attention to schedule D.

Have you found it?

Mrs. **Travaglia**. Yes.

Mr. **Chabraja**. OK. You see the series of numbers there in the part II section——

Mrs. **Travaglia**. Yes.

Mr. **Chabraja** [continuing]. Beginning with the number, 150,000, for the gross sales price?

Mrs. **Travaglia**. I do.

Mr. **Chabraja**. And then a number of 250,000 for cost, or other basis?

Mrs. **Travaglia**. I do.

Mr. **Chabraja**. And then a $100,000 loss?

Mrs. **Travaglia**. I do.

Mr. **Chabraja**. I am going to ask you some questions about that series of numbers. Is this your handwriting on this form?

Mrs. **Travaglia**. It is.

Mr. **Chabraja**. OK. And I believe you testified earlier, that as far as you were concerned, this was just a draft, or a preliminary worksheet?

Mrs. **Travaglia**. Yes.

Mr. **Chabraja**. Do you recall where the number, 250,000, came from?

Mrs. **Travaglia**. No, sir. I do not. I had to be given those figures.

Mr. **Chabraja**. By Mr. Watson?

Mrs. **Travaglia**. It had to be Mr. Watson.

Mr. **Chabraja**. Do you recall any discussions with Mr. Watson about where he obtained those figures?

Mrs. **Travaglia**. No. Only that, that a large loss had been sustained.

Mr. **Chabraja**. Mr. Watson told you that?

Mrs. **Travaglia**. Yes.

Mr. **Chabraja**. And did he tell you the magnitude of the loss?

Mrs. **Travaglia**. Not really.

Mr. **Chabraja**. All right. And did he tell you whether that $250,000 was made up of assets at fair market value?

Mrs. **Travaglia**. You see, I cannot answer that because I don't remember the whole conversation.

Mr. **Chabraja**. OK.

Mrs. **Travaglia**. I don't remember but just a few words of it.

Mr. **Chabraja**. Now were you familiar with the tax concept at the time, that—in connection with the sale or exchange of assets, the appropriate tax term to explore was the cost or adjusted basis of the assets?

Mrs. **Travaglia**. No. That would be something that I would refer back to him anyway.

Mr. **Chabraja**. Back to him?

Mrs. **Travaglia**. Yes.

Mr. **Chabraja**. Were you familiar with the fact that you could not write off on a schedule D fair market value?

Mrs. **Travaglia**. Well, I think there are some qualifications on that, but, yes.

Mr. **Chabraja**. Essentially, you are familiar with those?

Mrs. **Travaglia**. I'm familiar with that.

Mr. **Chabraja**. OK. Then yesterday—were you present yesterday in the——

Mrs. **Travaglia**. Yes, sir.

Mr Chabraja [continuing]. In the hearing room? We heard some testimony from Mr. Watson, who indicated that in connection with the $150,000 sale or exchange figure——

Mrs. Travaglia. Yes.

Mr. Chabraja [continuing]. He testified that you had made some computations, and that you built that $150,000 figure by using the $88,500 in legal fee income, plus some other things that he could not quite identify.

Can you shed any light on how you put that hundred and——

Mrs. Travaglia. I can shed light on this. That—and as you put it—I ballparked a figure, or we ballparked a figure. Never in my life would I ballpark a figure. Never.

Mr. Chabraja. OK. How did you get it?

Mrs. Travaglia. I had to have been given these figures.

Mr. Chabraja. OK. You did not compute it, in other words?

Mrs. Travaglia. No.

Mr. Chabraja. You did not go through any books and records and come up with a $150,000 number?

Mrs. Travaglia. No. And the reason why, part of the reason why I can say that I did not compute this: there would be more worksheets had I.

Mr. Chabraja. Had you done——

Mrs. Travaglia. I routinely kept worksheets on everything.

Mr. Chabraja. OK. Mr. Watson gave you that number, that $150,000 number?

Mrs. Travaglia. He had to have. No one else in the office had authority. I did not have the authority to put those figures in there. I was a clerk.

Mr. Chabraja. And did you have any records from which you could have computed that figure?

Mrs. Travaglia. No. We were not given that many records. I think we were given W-2, a few interest statements and—I know the 2119, which the sale—is the sale of the residence. They were already figured.

Mr. Chabraja. They were figured by whom?

Mrs. Travaglia. Well, I don't know whose writing that is.

Mr. Chabraja. OK.

Mrs. Travaglia. In here, it is my writing because I recopied.

Mr. Chabraja. OK. Let me direct you, really, back to schedule D again, and direct your attention to the other exhibit you have in front of you, that you identified earlier, exhibit 10, Claiborne defense exhibit 10. It is the yellow sheets that are in front of you.

Mrs. Travaglia. Where did I come up with that? I don't know.

Mr. Chabraja. Well, let me ask you a question about that. You see on item No. 2, there is——

Mrs. Travaglia. Yes.

Mr. Chabraja [continuing]. An item called "income from private practice?"

Mrs. Travaglia. Yes.

Mr. Chabraja. That lists an amount of $88,500?

Mrs. Travaglia. Yes.

Mr. Chabraja. All right. If—do you have a recollection that you were aware of that figure?

Mrs. Travaglia. No, sir. I do not.

Mr. **Chabraja**. All right. You have identified your handwriting——

Mrs. **Travaglia**. Yes.

Mr. **Chabraja** [continuing]. On this sheet, so you know you have seen this sheet some time?

Mrs. **Travaglia**. Yes.

Mr. **Chabraja**. But you do not know, I take it, whether the $88,500 was listed and on this sheet at the time you saw it?

Mrs. **Travaglia**. Well, to be real truthful, I couldn't tell you if the 54 was there.

Mr. **Chabraja**. OK. Or any other number?

Mrs. **Travaglia**. Or any other number.

Mr. **Chabraja**. All right. Now had you been aware of the $88,500, and the legend, "income from private practice," and the legend below that, would you have computed it as part of the $150,000 sales price shown on schedule D?

Mrs. **Travaglia**. No, sir. It's schedule C income.

Mr. **Chabraja**. And you knew that at the time?

Mrs. **Travaglia**. Possibly not. Right now, I'm looking at it, yes.

Mr. **Chabraja**. As you have looked at it——

Mrs. **Travaglia**. Possibly not.

Mr. **Chabraja**. No, but as you look at it now, it jumps out at you as schedule C income?

Mrs. **Travaglia**. Yes.

Mr. **Chabraja**. All right. And were you aware, at the time, whether you knew this number, or not, that there was some schedule C income in connection with this return?

Mrs. **Travaglia**. At the time that I first saw this——

Mr. **Chabraja**. Yes.

Mrs. **Travaglia** [continuing]. At the time it was brought in, no.

Mr. **Chabraja**. Well, why don't you take a look at page 2 where you have, as I remember your direct examination, some handwritten——

Mrs. **Travaglia**. Two of 10?

Mr. **Chabraja**. Yes, two, of exhibit 10. Down there at the very bottom you have, some little handwritten notations?

Mrs. **Travaglia**. Yes.

Mr. **Chabraja**. OK. Those notations appear to me to be questions that you raised as you——

Mrs. **Travaglia**. They are.

Mr. **Chabraja** [continuing]. Were working on this return. And are not those questions concerning deductions, mostly? You are seeking information with respect to deductions?

Mrs. **Travaglia**. They are.

Mr. **Chabraja**. And do not at least a couple of those deductions look like deductions that would be schedule C deductions?

Mrs. **Travaglia**. They are.

Mr. **Chabraja**. And were you looking for deduct items to offset against schedule C income, do you recall?

Mrs. **Travaglia**. Possibly. I think when I first went through this, I was just looking for any and everything that just didn't appear to be here.

Mr. **CHABRAJA**. OK. But one of the things you can tell me, with certainty, is that you certainly did not compute and include $88,500 of income within the $150,000 figure appearing on schedule D?

Mrs. **TRAVAGLIA**. I will have to say if I did, I was told to.

Mr. **CHABRAJA**. You were told to——

Mrs. **TRAVAGLIA**. If I did, I was told to do it.

Mr. **CHABRAJA**. By——

Mrs. **TRAVAGLIA**. Right or wrong, I was told. I was——

Mr. **CHABRAJA**. By Mr. Watson?

Mrs. **TRAVAGLIA** [continuing]. A clerk.

Senator **WARNER**. Mr. Chairman, we did not get the response. By whom? And she pointed her finger.

Mr. **CHABRAJA**. Mr. Watson?

Senator **WARNER**. Would you repeat that.

Mrs. **TRAVAGLIA**. Pardon me, sir?

Senator **WARNER**. You were told, and then you said by whom you were told.

Mrs. **TRAVAGLIA**. Mr. Watson.

Senator **WARNER**. Mr. Watson.

Mr. **CHABRAJA**. Is it your memory that these numbers on the schedule D were all plug numbers, all numbers given to you by Mr. Watson?

Mrs. **TRAVAGLIA**. Is it my contention—my memory?

Mr. **CHABRAJA**. Your contention. Is that your belief today?

Mrs. **TRAVAGLIA**. Yes.

Mr. **CHABRAJA**. Yes. And it is your belief that you did not do computations?

Mrs. **TRAVAGLIA**. I positively did not.

Mr. **CHABRAJA**. OK. And in fact when you presented schedule D, as you drafted it, to Mr. Watson, you in fact objected and told him it was wrong, did you not?

Mrs. **TRAVAGLIA**. I told him the entire return was wrong.

Mr. **CHABRAJA**. OK. On that schedule D, we talked about all the numbers, and there is a legend up in the upper lefthand corner of it, that I believe Mr. Goodman had you read. No, in the tax return, schedule D of the tax return. Where did you get that language? First, is it in your handwriting?

Mrs. **TRAVAGLIA**. Yes; that is my handwriting.

Mr. **CHABRAJA**. Where did you get that language? Is that something that you——

Mrs. **TRAVAGLIA**. That I made up?

Mr. **CHABRAJA**. Yes.

Mrs. **TRAVAGLIA**. In the first place, I didn't know who Harry Claiborne was, and I'm sorry to say Harry, without saying Judge Claiborne. I did not know who he was. It meant nothing. So I would not have known that there was a law practice. It had to be told to me.

Mr. **CHABRAJA**. By Mr. Watson?

Mrs. **TRAVAGLIA**. Yes; there was only one other person in the office and that was Jerry Watson. His partner did not do any accounting or bookkeeping or taxes.

Mr. **CHABRAJA**. Directing—let's see if I can sum up your testimony about exhibit D. Is that your work product, exhibit D?

Mrs. **TRAVAGLIA**. My worksheet.

Mr. **Chabraja**. Well, is it your work product? Did you prepare it, other than penciling some numbers down on a piece of paper?

I mean, is this a product of your effort? Schedule D.

Mrs. **Travaglia**. A product of my effort. Not really.

Mr. **Chabraja**. OK.

Mrs. **Travaglia**. I mean, I prepared this. I wrote on this. But a finished product? No.

Mr. **Chabraja**. Directing your attention to exhibit D, those sheets, the yellow sheets that you have in front of you——

Mr. **Goodman**. Claiborne exhibit 10.

Mr. **Chabraja**. Excuse me. Mr. Goodman, thank you. Claiborne exhibit 10. Are those sheets sufficient, and adequate, to enable you to prepare an intelligible tax return? Is there enough information there?

Mrs. **Travaglia**. No; there are not. But then again, I did not interview this client. I would have asked for a great deal more.

Mr. **Chabraja**. You testified, earlier, that when you prepared tax returns, you always maintained your worksheets and the client data upon which you relied, and filed it?

Mrs. **Travaglia**. We did never keep the client data but the worksheets that we worked from during the interview, we always retained in the files.

Mr. **Chabraja**. When you say you did not keep client data, do you mean original records of——

Mrs. **Travaglia**. The interest statement, bank statements, a copy of their W-2, a copy of their IRA, or forfeiture of savings. We did not retain those.

Mr. **Chabraja**. You returned to the taxpayer the original books and records and property of the taxpayer?

Mrs. **Travaglia**. Yes, yes, along with a copy of the prepared tax return.

Mr. **Chabraja**. Now, the information that the taxpayer supplied to you in handwritten or typed form, like Claiborne exhibit 10, was it your practice to retain that?

Mrs. **Travaglia**. I would have.

Mr. **Chabraja**. OK. And you in fact did with respect to other taxpayers?

Mrs. **Travaglia**. I would have.

Mr. **Chabraja**. Did you prepare the vast majority of the returns coming through your office, Mr. Watson's office?

Mrs. **Travaglia**. The majority, yes.

If they were fairly important people, I didn't get the returns at all.

Mr. **Chabraja**. Who did them?

Mrs. **Travaglia**. Mr. Watson.

Mr. **Chabraja**. He did them himself?

Mrs. **Travaglia**. I'm assuming so, yes.

Mr. **Chabraja**. You were aware of returns that went out of creative tax planning that you didn't work on?

Mrs. **Travaglia**. Yes.

Mr. **Chabraja**. Do you know whether Mr. Watson would employ outside accounting facilities?

Mrs. **Travaglia**. Well, I know he had a secretary at one time that he was training to do a fairly simple maybe 1040A or a simple

1040. And they were routinely returned back to the office incorrect. And I corrected them.

Mr. **Chabraja**. By the way, with respect to the Claiborne return, and schedule D in particular, does that schedule present a tax problem, assuming you had complete information, that's beyond your capability?

Have you handled schedule D's before?

Mrs. **Travaglia**. Oh, yes.

Mr. **Chabraja**. And you know how to do it?

Mrs. **Travaglia**. Oh, yes.

Mr. **Chabraja**. And what did you need to complete a schedule D that you didn't have?

Mrs. **Travaglia**. For this particular return?

Mr. **Chabraja**. Yes.

Mrs. **Travaglia**. Well, it would have been the actual losses, if there was any insured value on the loss, what was the value? Was there a booked value, a recaptured depreciation that had been taken?

There were several things that would have had to have been done. Had the asset produced income previously and, if so, you had to recapture that along with the depreciation.

Mr. **Chabraja**. Did you even know what asset Mr. Watson was intending by this schedule D?

Mrs. **Travaglia**. I don't remember now.

Mr. **Chabraja**. Did you know at the time, do you think?

Mrs. **Travaglia**. Well, I was just told that there was a loss.

Mr. **Chabraja**. OK.

Mrs. **Travaglia**. I can't remember all of it.

Mr. **Chabraja**. By the way, when was the last time you saw Claiborne Exhibit 10 after you worked on the return?

Mrs. **Travaglia**. I was shown schedule D by the Justice Department prior to the first trial.

Mr. **Chabraja**. I am not sure you understood my question.

Mrs. **Travaglia**. Oh. Sorry.

Mr. **Chabraja**. After you completed your work on that return—I use the word "completed" advisedly—what did you do with the return and the yellow sheets that have been identified as Claiborne Exhibit 10?

Mrs. **Travaglia**. Packaged everything up with everything that he had. I believe there were a couple of folders. Put a rubber band around them and put it on Jerry's desk.

Mr. **Chabraja**. And did you say anything to him?

Mrs. **Travaglia**. He wasn't there.

Mr. **Chabraja**. Did you tell him you were going to give him the return?

Mrs. **Travaglia**. I told him several times it's coming back, it isn't right.

Mr. **Chabraja**. By your statement "it's coming back," you mean it's coming back incomplete?

Mrs. **Travaglia**. To him.

Mr. **Chabraja**. And did you ask him for an opportunity to discuss it with him?

Mrs. **Travaglia**. I believe we may have talked a couple of times about it. But I think maybe it might have been for several things in here. And one of my questions would have been was there a 1040-ES?

Mr. CHABRAJA. OK. You were missing information on 1040-ES?

Mrs. TRAVAGLIA. Yes.

Mr. CHABRAJA. To the best of your knowledge, you didn't have any estimated tax information? You have to speak.

Mrs. TRAVAGLIA. I'm sorry. No, that was not included.

Mr. CHABRAJA. What about an application for extension?

Mrs. TRAVAGLIA. That was not included.

Mr. CHABRAJA. All right. Did you do any work on the form 2119?

Mrs. TRAVAGLIA. I believe I copied. I think I can see back here on worksheets that I copied what was there.

Mr. CHABRAJA. Are you talking about the two pages of Schedule BL-3?

Mrs. TRAVAGLIA. Yes.

Mr. CHABRAJA. OK. That's in your handwriting?

Mrs. TRAVAGLIA. Yes, it is.

Mr. CHABRAJA. And you copied that and tabulated it from exhibit 10?

Mrs. TRAVAGLIA. Yes.

Mr. CHABRAJA. Turning to the form——

Mrs. TRAVAGLIA. 2119?

Mrs. CHABRAJA. 2119 itself, do you recognize the handwriting?

Mrs. TRAVAGLIA. No, I don't.

Mr. CHABRAJA. You don't know whether that's Jerry Watson's or somebody else's?

Mrs. TRAVAGLIA. No, I do not.

Mr. CHABRAJA. Would you have been capable of filling out Form 2119 with the information that you had available to you on Schedule BL-3?

Mrs. TRAVAGLIA. Yes. If all the information was there, yes.

Mr. CHABRAJA. With respect to the information that you have on schedule BL-3, did you have any underlying documentation or receipts for any of the cost data?

Mrs. TRAVAGLIA. I didn't. Well, I don't remember whether I did or not.

Mr. CHABRAJA. Do you have any recollection as to whether you had transactional documents? By that I mean——

Mrs. TRAVAGLIA. Escrow.

Mr. CHABRAJA. The escrow or the sales or the deeds?

Mrs. TRAVAGLIA. I do not recall.

Mr. CHABRAJA. OK. So you don't remember anything about that transaction other than what was on exhibit 10?

Mrs. TRAVAGLIA. No, sir.

Mr. CHABRAJA. Did you have some conversations with Jerry Watson urging his attention to this return and he pushed you aside and said "later?"

Mrs. TRAVAGLIA. Several times.

Mr. CHABRAJA. By the way, does form 2119 present any unusual or special problems that are beyond your competence?

Mrs. TRAVAGLIA. Not if you have all of the information.

Mr. CHABRAJA. OK. Are you familiar with the concept of adjusted selling price?

Mrs. TRAVAGLIA. Yes.

Mr. **Chabraja**. You know what that is?

Mrs. **Travaglia**. Yes.

Mr. **Chabraja**. And you know that that's the sales price less the commission?

Mrs. **Travaglia**. Less the commission.

Mr. **Chabraja**. And that belongs on line 9?

Mrs. **Travaglia**. Well, the new ones now, it's 3.

Mr. **Chabraja**. The new is now 3?

Mrs. **Travaglia**. Yes.

Mr. **Chabraja**. And there it was line 9. And just take——

Mrs. **Travaglia**. No; here it's line 5.

Mr. **Chabraja**. OK, line 5. I stand corrected. Thank you.

Can you take a quick look at that and discern very readily that line 5 is wrong, the adjusted selling price?

You know, Mrs. Travaglia, I hate to quarrel with you. But as I look at the form, it looks like line 9 to me. Do you want to take another look?

Mrs. **Travaglia**. Well, that's after fixing-up expense, and that's after the basis of residence sold. You asked for the amount realized after the selling.

Mr. **Chabraja**. And that's what you call the adjusted sales price, isn't it?

Mrs. **Travaglia**. Yes; it would be, yes.

Mr. **Chabraja**. OK.

The amount realize and the adjusted sales price are just the same unless there is some fix-up expenses in connection with the sale, isn't that about the sum of it?

Mrs. **Travaglia**. Well, subtracting 8 from 5, yes, which would have been zero.

Mr. **Chabraja**. OK. Can you tell that the number on line 9 is wrong very quickly?

Mrs. **Travaglia**. It says right here adjusted sales price. Subtract line 8 from 5, which would leave the 314,812.

Mr. **Chabraja**. Take a look at line 4. It talks about commissions and other expenses?

Mrs. **Travaglia**. Considerable.

Mr. **Chabraja**. Huh?

Mrs. **Travaglia**. Considerable.

Mr. **Chabraja**. $410,000 in commissions?

Mrs. **Travaglia**. Considerable.

Mr. **Chabraja**. That's not what you have on schedule BL–3, is it?

Mrs. **Travaglia**. No.

Mr. **Chabraja**. What do you show the commissions to be? In the neighborhood of $40,000, aren't they?

Mrs. **Travaglia**. Commissions and other expenses, $19,000 plus $27,000.

Mr. **Chabraja**. OK. So if we look at this together, Mrs. Travaglia, we observed together, haven't we, in a matter of seconds and minutes that form 2119 is incorrectly prepared right at the threshold, don't we?

Mrs. **Travaglia**. Yes.

Mr. **Chabraja**. OK. And it would not have taken you very long if you had examined this return to spot all of those errors in form 2119?

Mrs. TRAVAGLIA. If I had prepared it, I wouldn't have let half of it go through.

Mr. CHABRAJA. And you knew from the work you did with schedule BL-3, that there was quite a gain to be recognized here, didn't you?

Mrs. TRAVAGLIA. Yes; but he does have an exclusion.

Mr. CHABRAJA. A $100,000 exclusion.

Mrs. TRAVAGLIA. And if he replaced the property. There are several factors here. But all we're working with right now are additions and subtractions.

Mr. CHABRAJA. Uh-huh. OK.

In short, the concepts we have been talking about, the tax concepts on form 2119 and on schedule D, and even the concept we talked about schedule C income, those aren't particularly difficult tax concepts, are they?

Mrs. TRAVAGLIA. No; they are not.

Mr. CHABRAJA. If there is such a thing, what would your typical client be like, your client base, what is it made up of?

Mrs. TRAVAGLIA. Well, we have tip earners in the State of Nevada, tip income dealers. Those are typical returns, reporting tip income.

Mr. CHABRAJA. The majority of the clientele of Creative Tax Planning were tip income workers?

Mrs. TRAVAGLIA. Outside of the clients, the bookkeeping clients we had, and we had physicians and professional people.

Mr. CHABRAJA. Smaller in number?

Mrs. TRAVAGLIA. Rental income which did entail capital gains and losses. But the majority were tip earning people.

Mr. CHABRAJA. You mentioned in your direct testimony that Mr. Watson had had some other problems. I'm not going to explore into those with you. But I would like to know if, in 1980, he had a bad reputation in the community?

Mrs. TRAVAGLIA. Well, I had heard of several things.

Mr. CHABRAJA. Were you comfortable working for him in 1980?

Mrs. TRAVAGLIA. In the beginning, yes, everything was fine.

Mr. CHABRAJA. But you went to work with him when, 19——

Mrs. TRAVAGLIA. September 1979 and left in January of 1982.

Mr. CHABRAJA. Were you beginning, in 1980, to hear bad things about Mr. Watson?

Mrs. TRAVAGLIA. Well, we had someone waiting at the front door with a gun one day.

Mr. CHABRAJA. Somebody not real happy with Mr. Watson?

Mrs. TRAVAGLIA. Not too happy.

Mr. CHABRAJA. Is it fair to say that Mr. Watson had a number of disgruntled taxpaying clients?

Mrs. TRAVAGLIA. Yes.

Mr. CHABRAJA. And you don't think that was a closely guarded secret, do you?

Mrs. TRAVAGLIA. No.

Mr. CHABRAJA. OK. Thank you, Mrs. Travaglia.

Mrs. TRAVAGLIA. Thank you.

The CHAIRMAN. Mr. Goodman.

REDIRECT EXAMINATION

Mr. GOODMAN. Mrs. Travaglia, Mr. Watson had a lot of clients, didn't he?

Mrs. TRAVAGLIA. Yes.

Mr. GOODMAN. And the way the office was set up is you were able to interview some of them, and you considered those your clients, didn't you?

Mrs. TRAVAGLIA. Pretty much so, yes.

Mr. GOODMAN. And you felt ultimately responsible for the work that you were doing for "your clients?"

Mrs. TRAVAGLIA. Responsible, but I did not set fees. I was not allowed to do that.

Mr. GOODMAN. Who set the fees?

Mrs. TRAVAGLIA. Jerry Watson.

Mr. GOODMAN. And he would speak to the client directly or would he tell you what the fee should be?

Mrs. TRAVAGLIA. No. Directly to the client. I never knew.

Mr. GOODMAN. He would be seeing everybody who came through the door at one time or another, at least to discuss the subject of fees?

Mrs. TRAVAGLIA. Pretty much so, yes.

Mr. GOODMAN. But once the fee was established and you began to do the work, you felt ultimately responsible for it, did you not?

Mrs. TRAVAGLIA. For those that I did, yes.

Mr. GOODMAN. For the ones that you did.

And the ones that you considered to be Mr. Watson's clients, you felt that he was going to take the ultimate responsibility?

Mrs. TRAVAGLIA. Yes.

Mr. GOODMAN. And as far as the work which you were doing on the Claiborne return, would it be fair to state that you felt that it was Mr. Watson's ultimate responsibility?

Mrs. TRAVAGLIA. Positively.

Mr. GOODMAN. And you turned over the material to him, did you not, after you completed your work on the worksheets?

Mrs. TRAVAGLIA. Yes.

Mr. GOODMAN. Now, you indicated to one of Mr. Chabraja's questions that after you got through with the worksheets you gave the worksheets and several files to Mr. Watson?

Mrs. TRAVAGLIA. Yes.

Mr. GOODMAN. Now, were those several files related to the Claiborne worksheets?

Mrs. TRAVAGLIA. Well, I think that we probably had interest statements, maybe some bank statements. Whatever had to do with this year—and since he was a first-year client—whatever had to do with it, I packaged it all up and gave it to him.

Mr. GOODMAN. Do you recall having returns from prior years within your possession?

Mrs. TRAVAGLIA. No, I did not have them. Had I, I would have done the schedule G perhaps.

Mr. GOODMAN. Do you know whether or not Mr. Watson had within his possession the returns from prior years?

Mrs. TRAVAGLIA. Possibly.

Mr. GOODMAN. Do you know whether or not Mr. Watson wrote to Judge Claiborne and said that if I'm going to do your returns, I want the returns from the prior years?

Mrs. TRAVAGLIA. I was not privy to that information.

Mr. GOODMAN. Were you privy to any type of correspondence between Mr. Watson and Judge Claiborne?

Mrs. TRAVAGLIA. No.

Mr. GOODMAN. You never saw any letters that Mr. Watson may have written to Judge Claiborne?

Mrs. TRAVAGLIA. No.

Mr. GOODMAN. Or any responses that Judge Claiborne may have had to letters written by Mr. Watson?

Mrs. TRAVAGLIA. No.

Mr. GOODMAN. All right. So, basically, you were working with the yellow sheets of paper and the other backup material that you can't recall?

Mrs. TRAVAGLIA. Well, the actual forms which we call worksheets.

Mr. GOODMAN. All right. But, based on your testimony, should we believe that there were documents other than just the yellow sheets of paper and the worksheets that were in front of you at any given time when you were doing your work?

Mrs. TRAVAGLIA. If you look at schedule A, obviously we had some medical information, at least insurance premium information. We had real estate tax information. We had generals—well, that comes from earnings. We had interest statements paid on First Western on home and Stamwell. So we obviously had those pieces of information.

Mr. GOODMAN. I'd like to call your attention again to exhibit No. 27, which is a tax return, and call your attention to schedule D.

That is all in your handwriting, correct?

Mrs. TRAVAGLIA. Yes, sir.

Mr. GOODMAN. Now, you use the phrase "accounts receivable for law practice."

Now, is that your phraseology?

Mrs. TRAVAGLIA. Well, now, as I answered before, I didn't know who Judge Claiborne was, I didn't know if he had a law practice or didn't have a law practice. I didn't know what he was. It could not have been something I decided was a law practice. I had to have been told.

Mr. GOODMAN. Well, you did have, did you not, before you the exhibit No. 10, the yellow sheets?

Mrs. TRAVAGLIA. Yes.

Mr. GOODMAN. All right. And you did indicate in one of your handwritten notes, which appears under No. 5, that there was No. 2 income with an asterisk, did you not?

Mrs. TRAVAGLIA. Yes, I did.

Mr. GOODMAN. And the No. 2 income on the exhibit, respondent's 10, refers to income from private practice before appointment in 1978, payable and received in 1980, does it not?

Mrs. TRAVAGLIA. Yes, it does.

Mr. GOODMAN. So at least you had that information available to you?

Mrs. TRAVAGLIA. Obviously.

Mr. GOODMAN. Obviously at the time that you were preparing the tax return, correct?

Mrs. TRAVAGLIA. Obviously.

Mr. GOODMAN. OK. Now, you turned over the yellow pieces of paper, respondent's 10, to Mr. Watson along with your worksheets on the tax return, which is House 27, and you did not see respondent's 10 until when again? When is the next time you saw the yellow sheets of paper after you turned them over to Mr. Watson?

Mrs. TRAVAGLIA. Sometime in 1983, when the FBI called upon me.

Mr. GOODMAN. All right. Would it have been around June of 1983?

Mrs. TRAVAGLIA. Probably.

Mr. GOODMAN. And at that point in time you had an occasion to look at those documents?

Mrs. TRAVAGLIA. Yes.

Mr. GOODMAN. And those were the documents upon which you worked; is that right?

Mrs. TRAVAGLIA. I was shown schedule D and the yellow sheet. I do not know if I saw the entire return, but I know I saw the biggest portion of it, yes.

Mr. GOODMAN. And you told them that is the document that you were using when you were working on the Judge's——

Mrs. TRAVAGLIA. Well, they asked me was that my handwriting, and I said yes, positively.

Mr. GOODMAN. Fine. Nothing further.

The **CHAIRMAN.** Mr. Chabraja.

Mr. CHABRAJA. Nothing further.

The **CHAIRMAN.** Mrs. Travaglia?

Mrs. TRAVAGLIA. Yes, sir?

The **CHAIRMAN.** Let me ask you a question which may be both immaterial and irrelevant, but I will not know until I have your answer.

Is that your doodle?

Mrs. TRAVAGLIA. No, sir.

The **CHAIRMAN.** Was that doodle on the page when you first saw it?

Mrs. TRAVAGLIA. Yes—well, I cannot say it was on the first time, but I was accustomed to seeing doodles on everything in the office that Jerry did.

The **CHAIRMAN.** You believe it to be Mr. Watson's doodle?

Mrs. TRAVAGLIA. Yes.

The **CHAIRMAN.** Or Judge Claiborne's doodle?

Mrs. TRAVAGLIA. Mr. Watson's.

The **CHAIRMAN.** Now, that is your handwriting that overrides the bottom of the doodle?

Mrs. TRAVAGLIA. 5 and 6, and bookkeeper ticks.

The **CHAIRMAN.** Now, whose handwriting do you believe the upper part of the page to be, items 1, 2, 3, and 4?

Mrs. TRAVAGLIA. I am sorry, sir. I do not know.

The **CHAIRMAN.** Is it Mr. Watson's?

Mrs. TRAVAGLIA. I really do not know.

The **CHAIRMAN.** You do not recognize it as Mr. Watson's?

Mrs. TRAVAGLIA. No, I do not.

The CHAIRMAN. But you do recognize the doodle as Mr. Watson's?

Mrs. TRAVAGLIA. Only in that I am accustomed, or was accustomed to seeing doodles on everything.

The CHAIRMAN. Similar doodles.

Mrs. TRAVAGLIA. Doodles.

The CHAIRMAN. And you are not aware of whether that handwriting in the upper part of the page would be Judge Claiborne's?

Mrs. TRAVAGLIA. No, sir.

The CHAIRMAN. You are not sufficiently acquainted with his.

Now, yesterday, as you heard because you were here, Mr. Watson said when we were talking about the figures on schedule D for the 1980 return that the gross sales price, less expense of sale which was $150,000, the cost or other basis is adjusted, which is $250,000, and the loss which appears in column F were figures that I believe he said, "We determined." Did you hear him say that?

Mrs. TRAVAGLIA. I did.

The CHAIRMAN. And then I believe I was the one who asked him who is the "we" in the "we determined." Do not worry about that. Who is the "we" in the "we determined?"

Mrs. TRAVAGLIA. Well, I assume he meant——

The CHAIRMAN. He said, "Mrs. Travaglia and myself."

Mrs. TRAVAGLIA. And that is what I assumed he meant when he said it. I did not determine it.

The CHAIRMAN. You deny that?

Mrs. TRAVAGLIA. I did not.

The CHAIRMAN. You had nothing to do with any calculation or determination?

Mrs. TRAVAGLIA. I had no authority to determine anything in the office.

The CHAIRMAN. And so you say he was wrong in that answer?

Mrs. TRAVAGLIA. I do.

The CHAIRMAN. Now, he also said that if he had your work sheets, he could probably determine how that figure was arrived at because you arrived at it. Is that a correct account of what occurred?

Mrs. TRAVAGLIA. Well, I believe that is what he said yesterday. Had I worked up a computation for any matter, I would have kept them in a file. I did not work up that computation.

The CHAIRMAN. And so you deny that statement? You deny that statement, Mrs. Travaglia?

Mrs. TRAVAGLIA. I do deny it.

The CHAIRMAN. Now, I have to ask you to suspend at this time, and you can step down from the stand, because I understand the——

Mr. RODINO. Yes; Mr. Chairman. I merely advise the Chair that the House is presently voting, and the managers request a recess for the purpose of going to vote.

The CHAIRMAN. Can the chairman give us an estimate of time?

Mr. RODINO. Within a half hour we will be back.

Mr. RUDMAN. A House half hour or a Senate half hour?

Mr. RODINO. A House half hour.

The **Chairman**. We have provided some transportation for Members of the House which we hope will make it possible to be a very short half hour.

Mr. **Rodino**. Thank you very much, and we will come back.

The **Chairman**. The committee will stand in recess, subject to the call of the Chair.

[Recess.].

The **Chairman**. The committee will come to order.

Senator Sarbanes, do you have questions?

The **Vice Chairman**. I will defer for the moment.

The **Chairman**. Senator Warner.

Senator **Warner**. Yes; questions? Thank you, Mr. Chairman.

Mrs. Travaglia, yesterday, when Mr. Watson was on the stand, I questioned him first through the chairman, and then independently, about his knowledge of Federal tax law rulings, instruction books, and the like, that millions and millions of Americans use all the time for the purpose of preparing their returns. And he, I think left, certainly with this Senator, and I hope others, the clear impression, that he denied much knowledge of tax law regulation, and the like.

Now you said earlier today, that you perhaps worked on as many as 300 to 400 returns during the course of your employment with Mr. Watson. Is that correct?

Mrs. **Travaglia**. Yes, sir.

Senator **Warner**. And of those 300 to 400 returns, how many do you think you discussed with him in some detail, or in any detail?

Mrs. **Travaglia**. Probably not more than about five.

Senator **Warner**. Just four to five out of——

Mrs. **Travaglia**. Five; 5, 6, perhaps as many as 10, but not many.

Senator **Warner**. Well, did you complete most of them yourself for the purpose of final signature and——

Mrs. **Travaglia**. Not——

Senator **Warner** [continuing]. Therefore, he did not require any attention?

Mrs. **Travaglia**. Not only did I complete, but I had interviewed the tax client, the taxpayer, so that I felt that I had sufficient information to prepare the tax return.

Senator **Warner**. Now in the course of the half dozen or so, that you did have occasion to discuss with him, what was your impression of his level of knowledge with respect to tax law regulation, and the like?

Mrs. **Travaglia**. Kind of hard to say now. In a lot of cases I already knew what I thought should have been done. If he confirmed that, fine and dandy. If he did not, I usually went to publication 115, which is very, very extensive, and does tell you what to do.

Senator **Warner**. Well, you heard him yesterday, and while you perhaps could not observe him as well as we, since you were in the back of the room, do you think that he accurately—or excuse me—do you believe he left an accurate impression before those assembled here today, of his level of tax knowledge, or do you feel he had a greater level of knowledge?

Mrs. **Travaglia**. He might have a greater level of knowledge because—I, I mean, I just can't answer that. He might have a greater level of knowledge.

Senator **Warner**. You suggested in your testimony, that when it involved an important client, he took that return and prepared it himself?

Mrs. **Travaglia**. Yes, sir.

Senator **Warner**. Now we have to presume that the range of important clients—some of them had tax problems of varying degrees, not just simple ones, and, in all probability, some of them, if they were important, that connotes a certain level of income and affluence, and that, we all know, usually involves a more complex return.

Mrs. **Travaglia**. Yes, sir.

Senator **Warner**. And if he were to prepare those returns, would it not be your judgment that he had a fairly high level of law—that is, knowledge of the law and regulation?

Mrs. **Travaglia**. Only, I would only go as far as saying, that if he had not the knowledge to prepare it, that he probably would investigate, and make certain that he had it correct. I don't know.

Senator **Warner**. And how would he do that investigation?

Mrs. **Travaglia**. Either call the IRS. They're very—are willing to discuss any number of problems that you might run into.

Senator **Warner**. So if he did not know the answer, it was your judgment that he had the skill to go and seek the answer, either with his own research, or consult someone?

Mrs. **Travaglia**. All tax preparers have the skill to know that you can pipe into the IRS and get the information. Whether they do, or not, is another matter.

Senator **Warner**. Speaking for myself, you impress me as a very forthright and truthful person, and you are trying as best you can to shed light on the issues before this panel.

Mrs. **Travaglia**. I am.

Senator **Warner**. Yesterday I asked Mr. Watson, I said assuming he did not have a knowledge of the tax law and regulation, which impression he tried, clearly, to give us, and he also said that Judge Claiborne did not, in any material way, suggest as to how the return be put together, and how this key element, the $150,000, be composed in such a manner as to roll in the $88,500 in fee income.

And in a sense, Mr. Watson said all fingers, really, fingers of guilt, point to you. Do you remember that question?

Mrs. **Travaglia**. I do remember it.

Senator **Warner**. Well, then I ask of you: Do you feel you have had the opportunity to tell us everything that you know about the case, that would help us reach the truth?

Mrs. **Travaglia**. I'm telling you, I had nothing to do with the computation of that——

Senator **Warner**. I understand that, clearly. But in the examination by both counsel, and in the course of examination by this panel, is there any fact, or thought, in the recesses of your mind, that you would like to provide us in our effort to try and seek the truth, and determine what the problem was?

Mrs. **Travaglia**. I don't think I can add anything. I don't know of anything to add, to assist.

Senator **WARNER**. Well, you appear to be an intelligent person. You have dealt with people; you have been involved in this type of professional work.

Could you give us your view as to how this situation developed and how it happened.

Mrs. **TRAVAGLIA**. I wouldn't want to do that. I don't know.

Senator **WARNER**. But if you did——

Mrs. **TRAVAGLIA**. I would not have done it.

Senator **WARNER**. I understand that. But do you have any ideas as to how it could have happened?

Mrs. **TRAVAGLIA**. No, sir.

Senator **WARNER**. Are these just innocent parties, dealing with one another with a total lack of knowledge, in a sort of fumbling way, developed in this situation, or, are these two very skillful, cunning men, contriving a scheme to defraud the people of the United States?

Mrs. **TRAVAGLIA**. Sir, I would like to say this: I don't know Judge Claiborne. I do know Mr. Watson, because I did work with him. I would not call him intelligent. Let it fall where it may.

Senator **WARNER**. Thank you, Mr. Chairman.

The **CHAIRMAN**. Senator Heflin.

Senator **HEFLIN**. Mrs. Travaglia, the item on schedule D, you, I believe have testified, that the figure that has been placed here, of $150,000, and the $250,000, and the loss of $100,000, that was in your handwriting?

Mrs. **TRAVAGLIA**. Yes, sir. It is.

Senator **HEFLIN**. As well as all of the writing on that schedule D?

Mrs. **TRAVAGLIA**. Yes, sir. It is.

Senator **HEFLIN**. I believe you have told us that those figures of $150,000, and $250,000, were given to you, and that you did not do any computation at all to try to obtain those figures?

Mrs. **TRAVAGLIA**. What I said was that had I done computation, I would have had some type of a worksheet. I would have tried to provide some reason, rhyme or reason for it.

Senator **HEFLIN**. Well, could it be missing?

Mrs. **TRAVAGLIA**. It could be, but I would not have done this.

Senator **HEFLIN**. Well, are you saying that you did not do any computation, or that you have no worksheet from which you could refresh your recollection that you did the computation?

Mrs. **TRAVAGLIA**. I'm saying both. I did not do the computation and I do not have any worksheets.

Senator **HEFLIN**. All right. Now, where on this tax return do you handle the sale of books?

Mrs. **TRAVAGLIA**. Where, on here? I don't see them any place.

Senator **HEFLIN**. Nowhere on the tax return?

Mrs. **TRAVAGLIA**. On this worksheet, it says something about a book loss. I recall a conversation about loss. Whether that entailed a library loss, or what, I don't remember.

Senator **HEFLIN**. Who did you have the conversation with?

Mrs. **TRAVAGLIA**. Jerry Watson.

Senator **HEFLIN**. So you did discuss with him some of the aspects of this return, and the figures, with Mr. Watson?

Mrs. **TRAVAGLIA**. In the beginning, there was some discussion about a very large loss.

Senator **Heflin**. All right. I wonder if the Sergeant at Arms might bring that easel with that thing closer to her, where she can sit there, and where we can view it.

Now as I understand it, you have written on—this is exhibit 10. This which appears here is in your handwriting?

Mrs. **Travaglia**. Yes, sir.

Senator **Heflin**. And the little checkmarks right there in your handwriting?

Mrs. **Travaglia**. Yes.

Senator **Heflin**. Is the asterisk there in your handwriting?

Mrs. **Travaglia**. I believe that was determined to be mine, yes.

Senator **Heflin**. That is yours. Has there been a handwriting expert look at this?

Mrs. **Travaglia**. Yes.

Senator **Heflin**. They did. Now, if you will, can you read this, what is on the——

Mrs. **Travaglia**. What I say in his business transactions, fair market value was not indicated.

Senator **Heflin**. Is that considered, or indicated?

Mrs. **Travaglia**. Considered, probably. In the book value he had a gain.

Senator **Heflin**. Is that book sale?

Mrs. **Travaglia**. Book sale.

Senator **Heflin**. All right.

Mrs. **Travaglia**. He had a gain from sale because book value was used as basis. If he has knowledge of their fair market value, we can go for it, add return, and apply to that No. 2 income.

Senator **Heflin**. All right. Is that the book sale that he sold to somebody that gave it to the universities?

Mrs. **Travaglia**. Often book value means general ledger booked value.

Senator **Heflin**. Well what does the word book sale mean?

Mrs. **Travaglia**. I'm assuming selling of a book, or books.

Senator **Heflin**. Now, down on that it has No. 2, income, and is this No. 2 here by this?

Mrs. **Travaglia**. Yes, sir.

Senator **Heflin**. And does it have an asterisk?

Mrs. **Travaglia**. Yes, sir.

Senator **Heflin**. Down there by No. 2, income, is there an asterisk there?

Mrs. **Travaglia**. Yes, sir.

Senator **Heflin**. Does that asterisk and this asterisk have a relationship?

Mrs. **Travaglia**. I don't know. I don't know.

Senator **Heflin**. Is there any other place on this page where an asterisk appears, other than that asterisk by No. 2, income?

Mrs. **Travaglia**. I don't see any, no.

Senator **Heflin**. You heard Mr. Watson testify that in schedule D that the figure $150,000 included the $88,500 of income from private practice and included the money from the book sale in adding that up.

Mrs. **Travaglia**. Yes, sir.

Senator **Heflin**. In your handwriting, you have here, and if you have knowledge of the fair value—I will ask you, was there some discussion about the book value of books—I assume, law books, or some books—as opposed to the fair market value, which would be the market value for used law books; was there any discussion on that?

Mrs. **Travaglia**. I cannot recall the discussions.

Senator **Heflin**. Well, if on this return that you filled out, where obviously, you must have had some knowledge about book sales, book value, and fair market price, where on the tax return that you filled out is anything pertaining to the books?

Mrs. **Travaglia**. I don't believe we have anything in here on the fair market value of books. This is a worksheet. This was intended to be a worksheet. Final work in every matter and in every way should have been applied to it. This is preliminary.

Senator **Heflin**. Well, you are writing a note here about the books.

Mrs. **Travaglia**. Yes, sir.

Senator **Heflin**. And you reference it to "No. 2, income"——

Mrs. **Travaglia**. Yes, sir.

Senator **Heflin**. Which has the $88,500 figure. Now, the book sale enters into it. Now, where else on the tax return would you apply—or did you apply—the $88,500, if that figure was there at the time?

Mrs. **Travaglia**. I don't see the 88 applied anyplace.

Senator **Heflin**. Well, could it be included within the $150,000?

Mrs. **Travaglia**. If it were, I was told to put it there.

Senator **Heflin**. Do you know what the book value of the books' sale was, the price?

Mrs. **Travaglia**. No, sir, I do not. I never saw, I have no list, and I definitely did not have a list of books at that time.

Senator **Heflin**. If you were deducting books as a sale, and if it were held longer than the long-term capital gains period, would it not have been included in the schedule D under the capital gains long-term?

Mrs. **Travaglia**. Only after recapture of depreciation, yes.

Senator **Heflin**. If you had——

Mrs. **Travaglia**. Had you—yes.

Senator **Heflin**. Well, you must have felt that there could have been some deduction in order to apply it to the No. 2 income, that there must have been some deduction——

Mrs. **Travaglia**. Sir, I was not—I was not allowed to make those decisions.

Senator **Heflin**. Well, I am trying to find what you meant by this letter; this is in your handwriting.

Mrs. **Travaglia**. I don't know.

Senator **Heflin**. You have no recollection of what you were intending to do by that note?

Mrs. **Travaglia**. No, sir.

Senator **Heflin**. In the ordinary course of events, a deduction from a loss would be applied against all income, would it not?

Mrs. **Travaglia**. A deduction of what type of loss?

Senator **Heflin**. A deduction, any deduction that you have, if you have a loss, you would apply it against all income, would you not?

Mrs. Travaglia. No, you would not. It depends; there are classifications.

Senator Heflin. Well, why are you saying that it would apply to No. 2 income, unless you at that time had the idea that you would include No. 2 income in capital gains?

Mrs. Travaglia. Well, I wouldn't have that idea. I am trying to say I don't know; I don't remember. I would not have done it. To sit here and post this right now, I would not do that.

Senator Heflin. Well, this is in your handwriting.

Mrs. Travaglia. Yes, sir. The entire return is in my handwriting.

Senator Heflin. Well, please explain what you mean in your handwriting by that note.

Mrs. Travaglia. I can't do that. I think there might be pieces missing. I don't know.

Senator Heflin. Now, you mentioned on direct that you told Mr Watson that this return is coming back.

Mrs. Travaglia. I told him it was incorrect.

Senator Heflin. You didn't mention the words, "It is coming back"?

Mrs. Travaglia. To him; to Mr. Watson.

Senator Heflin. Oh, it is coming back to him.

Mrs. Travaglia. To Mr. Watson.

Senator Heflin. You don't mean to the Government?

Mrs. Travaglia. No, sir.

Senator Heflin. On the form 2119, is that in your handwriting?

Mrs. Travaglia. Only the worksheet.

Senator Heflin. Only the——

Mrs. Travaglia. The worksheet.

Senator Heflin. The BL-3?

Mrs. Travaglia. Yes, sir.

Senator Heflin. The other one is not?

Mrs. Travaglia. The supplement. The other is not.

Senator Heflin. Now, if the correct figure of $47,000 under line 4, which is a commission of $47,388, is a figure, what would be the figures that would go into that figure on commissions and other expenses of the sale that appear on your BL-3?

Mrs. Travaglia. Let me find the commissions. On the very bottom, which is not my writing, the "677,612 and the 362,810 net after commissions," that is not my writing.

Senator Heflin. Well, what I'm asking you is the calculation of the figures that would go from your BL-3; what would be the correct figure that would have to go under that from the——

Mrs. Travaglia. On the second page, item No. 4, commissions and other expenses of sale, there are two figures there—$19,706 and $27,682.

Senator Heflin. Do those figures add up to the proper figure of 47——

Mrs. Travaglia. Four hundred and ten thousand, on No. 4?

Senator Heflin. No. Do they add up to what should have been there, what has been placed there—or, what do they add up to?

Mrs. Travaglia. $47,388.

Senator Heflin. All right. The figure that is there is what—410—

Mrs. **Travaglia**. $410,188. And that is not my writing.

Senator **Heflin**. That is not your writing.

That's all.

The **Chairman**. Senator Rudman.

Senator **Rudman**. Mrs. Travaglia, I don't want to ask you about any figures in particular. I think we have been over those. But I have another thought that I would like to explore with you, if you could try to be helpful to us, to try to find out what happened here.

You made out this entire return. Obviously, there were two items in this return that gave Judge Claiborne trouble. One was the failure to include about $88,500 worth of ordinary income and to cloak it in some other way, on schedule D or otherwise. And the other, of course, was to totally obfuscate the fact there was substantial capital gain.

The second part of that took place on schedule BL-3, which you made out——

Mrs. **Travaglia**. I copied.

Senator **Rudman** [continuing]. You copied. But then, 2119; and you testified that you did not make out form 2119. That is particularly significant to me, at least. And I want to ask you, was it unusual in the course of your preparing things at Mr. Watson's direction to be making out an entire return, as you did this one, but not to make out one of the schedules?

Mrs. **Travaglia**. To do the "leg work", do you understand the term?

Senator **Rudman**. I understand.

Mrs. **Travaglia**. To do all the little, dirty detail work I did often.

Senator **Rudman**. Would you normally have made out the 2119 to make out the form?

Mrs. **Travaglia**. Had he been my client, had I started from inception, yes.

Senator **Rudman**. Well, of the work that you did for Mr. Watson's clients—and in a sense, they were all Mr. Watson's clients——

Mrs. **Travaglia**. Yes, sir.

Senator **Rudman** [continuing]. To the extent that the work was given to you by Mr. Watson, were there many instances where you would take that work and you would only do part of the return, and Mr. Watson would do other parts of the return?

Mrs. **Travaglia**. Yes, yes.

Senator **Rudman**. What parts of the return would he do?

Mrs. **Travaglia**. Well, probably the important part, and I can't say which, because I cannot recall right offhand, but I know there were other returns such as this.

Senator **Rudman**. You made out the BL-3 form?

Mrs. **Travaglia**. I copied

Senator **Rudman**. You copied it.

Mrs. **Travaglia**. Yes.

Senator **Rudman**. Had you been asked to make out the 2119, I assume you would have made it out differently than the one that is here before you?

Mrs. **Travaglia**. I would have added it correctly—or at least, given it a better shot.

Senator RUDMAN. Now, was it unusual for you to handle a return of this magnitude? I am talking the size of the income here. There is a lot of money involved in this return. This is not your average American.

Mrs. TRAVAGLIA. That's right. But I did not know who Judge Claiborne was.

Senator RUDMAN. Oh, I am not asking if you knew who he was.

Mrs. TRAVAGLIA. Important people, I didn't usually get. Our standard clients and our toke earners and just the average off the street, I did; I interviewed.

Senator RUDMAN. But you did this one.

Mrs. TRAVAGLIA. I did preliminary work. And that's all it was, preliminary work.

Senator RUDMAN. Did you ever question any of the numbers that were presented to you?

Mrs. TRAVAGLIA. I questioned the entire return. The one thing that bothered me most was that this was obviously a professional man; there was not a 1040-ES attached; there was too much of a refund. Rarely do professional people overpay their taxes—rarely. And I don't mean to say that they underpay them, but they don't overpay them.

Senator RUDMAN. All right. Now, I want to come back to something that you said in cross-examination, and the reason I am going to ask you these questions is because what we have to decide around here is who to believe.

You testified on your first visit to the Federal Building in Las Vegas, you walked in, you sat down, and you either said or thought something regarding Mr. Watson; you thought you were there——

Mrs. TRAVAGLIA. I said it.

Senator RUDMAN. What did you say?

Mrs. TRAVAGLIA. "What has he done now?"

Senator RUDMAN. All right. I am now going to ask you a series of questions because I want to know how much I can believe of Mr. Watson's testimony.

You had a reason for saying that. What had Mr. Watson done that you were personally aware of that caused you to believe you were there because he was under investigation?

Mrs. TRAVAGLIA. There were several clients that had lost their businesses over certain transactions. One client in particular beat Mr. Watson up for coming into his business and trying to sell it right out from underneath him. Several things.

Senator RUDMAN. Was Mr. Watson ever under any investigation by the law enforcement authorities in Nevada, to your knowledge?

Mrs. TRAVAGLIA. I only know hearsay.

Senator RUDMAN. You say what?

Mrs. TRAVAGLIA. I only know hearsay.

Senator RUDMAN. I want to ask you one last question. Was it a little unusual that you would handle a return such as this one of Judge Claiborne's without having a chance to talk to the client at all?

Mrs. TRAVAGLIA. Yes. I didn't like doing that.

Senator RUDMAN. In most cases, when you were handling a return for a client—and they were all Mr. Watson's clients—did you not have a chance to at least telephone them or talk to them?

Mrs. TRAVAGLIA. As a rule, they came in. I only telephoned if there were pieces missing.

Senator RUDMAN. Did you ever attempt to telephone Judge Claiborne?

Mrs. TRAVAGLIA. I was never allowed to that I know of.

Senator RUDMAN. That is really my question, and that is what I am driving at. Did Mr. Watson tend to insulate Judge Claiborne from direct conversations with you?

Mrs. TRAVAGLIA. Well, only in that I felt that since I was a lowly little clerk in the office, that I probably didn't deserve to meet Judge Claiborne.

Senator RUDMAN. I don't care what you thought——

Mrs. TRAVAGLIA. I think that's what it was.

Senator RUDMAN. But I don't care what you thought. I am only interested in what happened.

Mrs. TRAVAGLIA. I don't know.

Senator RUDMAN. No. You do know. Did you try to reach Judge Claiborne?

Mrs. TRAVAGLIA. No, sir; I did not.

Senator RUDMAN. Did you ever tell Mr. Watson that you thought you ought to talk to Judge Claiborne?

Mrs. TRAVAGLIA. No, sir, I did not.

Senator RUDMAN. Then why did you answer my question about four questions back when I suggested to you that in some way were you being insulated from Judge Claiborne by Mr. Watson, you answered "Yes"?

Mrs. TRAVAGLIA. Well, only in that it was his client.

Senator RUDMAN. But they were all his clients, Mrs. Travaglia.

Mrs. TRAVAGLIA. No; they weren't all of his clients.

Senator RUDMAN. Oh, they weren't?

Mrs. TRAVAGLIA. No.

Senator RUDMAN. Oh, did you bill some directly?

Mrs. TRAVAGLIA. I never was allowed to bill or set a fee. But we had walk-ins because of advertising or word of mouth. When they walked in, they were my clients, so to speak.

Senator RUDMAN. But most of the work you did was for Mr. Watson's clients; correct?

Mrs. TRAVAGLIA. Repeats, yes.

Senator RUDMAN. Most of the work was Mr. Watson's clients. And you talked to most of those clients yourself?

Mrs. TRAVAGLIA. Interviewed them and did the work, yes.

Senator RUDMAN. And Mr. Watson would have you call them and talk to them about their tax returns?

Mrs. TRAVAGLIA. No. I interviewed them and did the work from there on out. The only reason to call a client would be that if something were missing.

Senator RUDMAN. Well, if something were missing, would you call the client?

Mrs. TRAVAGLIA. Yes, because I had——

Senator RUDMAN. Why didn't you call Judge Claiborne when you were obviously a person who was genuinely concerned about this return? Why did you not call Judge Claiborne? You say you did not know who he was, so you obviously didn't know how important he was. Why didn't you call him?

Mrs. **Travaglia**. Because he was Mr. Watson's client, and I felt I should not. I felt, personally felt, I should not. I was never told, "Do not call so-and-so." I just felt I should not.

Senator **Rudman**. All right. Thank you.

The **Chairman**. Senator DeConcini.

Senator **DeConcini**. I have no questions.

The **Chairman**. Senator Pressler.

Senator **Pressler**. Let me, following up on what Senator Rudman has said, I want to get some of the atmosphere.

How did you originally get this job, and approximately what were your wages, and were you hired as a clerk or as an accountant?

Mrs. **Travaglia**. I was hired as a tax prep and bookkeeper, $7 an hour.

Senator **Pressler**. $7 an hour, which is how much—40 hours a week, usually?

Mrs. **Travaglia**. Basically, yes.

Senator **Pressler**. Did you work year around, or just during the tax season?

Mrs. **Travaglia**. Year around.

Senator **Pressler**. And how did you happen to find out about this job?

Mrs. **Travaglia**. It was advertised in the paper.

Senator **Pressler**. But you weren't hired as an accountant. I think yesterday we heard testimony that you were hired as an accountant.

Mrs. **Travaglia**. Absolutely not, absolutely not.

Senator **Pressler**. And you were not an accountant?

Mrs. **Travaglia**. No.

Senator **Pressler**. Now, under what circumstances did you leave his employment?

Mrs. **Travaglia**. Because there was a question of—it was said that I was charging them an hour—I would eat lunch at my desk and continue on working. We had a volume of work. And it was said that I shouldn't be charging him an hour when I really should have been taking lunch. And I took umbrage and left.

Senator **Pressler**. OK. Now, we have no way to know who to believe except by making judgments. In your judgment of your boss' character, would you say that it would be possible—was he the sort of a man who might have made a deal with somebody to do their tax returns a certain way and told you to do a part of them a certain way—in your judgment, could he conceivably have done that?

Mrs. **Travaglia**. I have to answer that negative. Positively not. I do not believe that Jerry would ever have made a deal with anyone that, "If I get you a $10,000 refund, then we will share it." Positively not.

Senator **Pressler**. So you have quite a high regard for his character.

Mrs. **Travaglia**. That is the only shining——

Senator **Pressler**. His intelligence, you do not have a high regard——

Mrs. **Travaglia**. No.

Senator **Pressler** [continuing]. But you have a high regard in the area of preparing a tax return and in his professional dealings, his character, you couldn't imagine him saying to somebody, "Well, let's send this return in and do the best we can, and if we get audited, we will"——

Mrs. **Travaglia**. Well, I'd like to qualify that, if I may. I don't believe that he would be helpful in doing that, and that would seem to be helpful.

Senator **Pressler**. He wasn't the sort of a man who would——

Mrs. **Travaglia**. Help.

Senator **Pressler** [continuing]. Encourage people to try to cheat the Government; he would try to fill them out in a straightforward way.

Mrs. **Travaglia**. Well——

Senator **Pressler**. For example, the tip employees, the people who had tips, you had instructions to tell them to report all their tips as best they could remember them.

Mrs. **Travaglia**. Yes.

Senator **Pressler**. It was not an atmosphere where you felt—even though you didn't have a high regard for this guy, it was not an atmosphere where you felt it was the sort of an office that would engage in trying to get out of taxes, I mean, that would try to pay the lowest amount legally possible——

Mrs. **Travaglia**. Well——

Senator **Pressler** [continuing]. But you couldn't imagine him saying to somebody, "Let's fill out this return this way. We'll send it in. If we get audited, the worst you'll have to do is probably pay a penalty. Let's give it a try"?

Mrs. **Travaglia**. No, no. That definitely he would not do. But it is the function of any tax preparer to look for every advantage, legal advantage.

Senator **Pressler**. Sure, certainly. Now, on this form over here, just one more question. "Wages as Federal Judge"—now, you saw that when you were——

Mrs. **Travaglia**. Yes, sir.

Senator **Pressler**. But a Federal judge, that's quite an august post, isn't it? That's quite a high post. Or, maybe it did not seem that way to you? I mean, that is a very——

Mrs. **Travaglia**. But it did seem that way to me, yes.

Senator **Pressler**. He is one of the three or four most important people—I mean, I'm from out in South Dakota, and a Federal judge in South Dakota is just one of the three or four—more important than a Senator. [Laughter.]

Senator **Heflin**. Come to Alabama.

Senator **Pressler**. But a Federal judge is a big deal in a small State.

Mrs. **Travaglia**. Yes, sir.

Senator **Pressler**. Like the Governor or the bishop or somebody. That must have really brought you up short, seeing that "Federal judge" up there.

Mrs. **Travaglia**. Yes, it did.

Senator **Pressler**. Thank you.

Mrs. **Travaglia**. But—may I qualify this, too? In tax work, you don't always read just every, little item such as "Federal judge"——

Senator **Pressler**. That's right up there at the top, isn't it?

Mrs. TRAVAGLIA. I know. But if you are moving pretty fast, you don't always dwell.

Senator PRESSLER. OK.

The CHAIRMAN. Senator Pryor.

Senator PRYOR. Thank you, Mr. Chairman. I will make this very short.

You testified that you had filled out and worked on the Norma Reis return——

Mrs. TRAVAGLIA. Yes, sir.

Senator PRYOR [continuing]. And she is the former wife of Judge Claiborne?

Mrs. TRAVAGLIA. Yes, sir.

Senator PRYOR. Was that the preceding year, or how long had you worked on——

Mrs. TRAVAGLIA. It would have been the 1980 return, also.

Senator PRYOR. Do you know whether or not this return was audited by the IRS?

Mrs. TRAVAGLIA. I don't know whether it was audited, but I do know that she came in, expecting and anticipating problems, because of the type of income, and that a 1040-ES had not been prepared for her, and in mortgage money, she was receiving it monthly, which means that as you earn, you should be paying the taxes. And she anticipated problems, and I felt that we needed all of that qualified to the IRS, and did as much on the form.

Senator PRYOR. Now, in this room a little over a decade ago was discussed another very famous burglary, and yesterday, we talked about burglaries in the office of Mr. Wright. While you were in the employ of Mr. Watson, do you know of any time that there might have been a burglary in that particular office or anyone breaking in to look for any papers?

Mrs. TRAVAGLIA. No, sir.

Senator PRYOR. The reason I ask that is, under the questioning by Senator Heflin, Senator Heflin asked you about some certain items of your notations on exhibit 10, and you stated that there might have been something missing. And I did not know whether you were implying that there had been something missing because of a burglary or someone coming into the office and taking something out.

Mrs. TRAVAGLIA. No, sir, no.

Senator PRYOR. I only have two other quick questions. When you told Mr. Watson that you saw problems with this particular return, did you mention specific problems to Mr. Watson, or did you just say that these were general in nature?

Mrs. TRAVAGLIA. I said it was wrong; it needs work.

Senator PRYOR. And how long did this file, after you put it in the folder, put the rubberband around it, how long did this file remain in the office of Mr. Watson until the time it was sent to the IRS—the tax return was sent? How many days, weeks, hours?

Mrs. TRAVAGLIA. It could have been as much as a month. I am not sure.

Senator PRYOR. And during this time, did you and Mr. Watson discuss this particular file of Judge Claiborne?

Mrs. TRAVAGLIA. Once it went on that desk with the rubberband, no.

Senator PRYOR. And when did you find out that Judge Claiborne had actually signed the return and that Mr. Watson had sent it to the Internal Revenue Service?

Mrs. TRAVAGLIA. The secretary at that time in the office—her name was Angela Lai—mentioned to me that, "Judge Claiborne has just come in and picked up his return." She was excited because Judge Claiborne had come in. Then I knew he had picked up his return. But I never in this world imagined it was this return.

Senator PRYOR. In other words, you thought they would send in a return that had been corrected, and a return that had been typed——

Mrs. TRAVAGLIA. Corrected, typed, copied, and——

Senator PRYOR [continuing]. Et cetera. And then, when you heard that he had picked up his return, what was your reaction?

Mrs. TRAVAGLIA. Nothing one way or another.

Senator PRYOR. Did a bell go off—did you say, "Well, there is really going to be some trouble here" because you did not know at that time that it had not been correct?

Mrs. TRAVAGLIA. No; I did not know that it had not been corrected.

Senator PRYOR. Thank you.

The CHAIRMAN. Senator McConnell, do you have——

Senator McCONNELL. No, Mr. Chairman.

The CHAIRMAN. Senator Hatch.

Senator HATCH. You probably already answered this, Mrs. Travaglia, but as I recall, you said that you did fill out schedule D; this is your handwriting?

Mrs. TRAVAGLIA. It is my handwriting.

Senator HATCH. I just want to button some of these things down. But you say that the writing up in the lefthand corner, you don't understand what it means, or anything else about it; is that correct?

Mrs. TRAVAGLIA. The theory to it; I don't understand the application, I don't understand what it all meant, no.

Senator HATCH. The figures down below, "1978, 1980, 150,000, 250,000, and 100,000"——

Mrs. TRAVAGLIA. Yes, sir.

Senator HATCH [continuing]. The 100,000 being a loss from the sale, from the gross sales price less expenses deducted from the cost or other basis of the business; 250,000 less 150,000 leaves a 100,000 loss.

Mrs. TRAVAGLIA. Yes, sir.

Senator HATCH. Now, you wrote those down?

Mrs. TRAVAGLIA. Those are my figures, my writing.

Senator HATCH. All right. Now, can you tell us—and I must have missed this—but can you tell us who gave you these figures? Do you know personally?

Mrs. TRAVAGLIA. The only other person in the office I took orders from was Mr. Watson.

Senator HATCH. So the only other person it could have come from would have been Mr. Watson?

Mrs. TRAVAGLIA. That's correct.

Senator HATCH. It did not come from Judge Claiborne?

Mrs. TRAVAGLIA. I have never—I had never——

Senator HATCH. Oh, you had never talked with him?

Mrs. TRAVAGLIA. Never talked to him.

Senator HATCH. So, if you wrote those figures down, they either had to come from you or Jerry Watson?

Mrs. TRAVAGLIA. Correct.

Senator HATCH. Do you have any idea—do you recall Mr. Watson giving you those figures?

Mrs. TRAVAGLIA. No. When all of the work was first handed to me, we were in the hallway. I wasn't even seated at my desk. He just handed me a batch of things and said, "Work up the preliminaries."

Senator HATCH. The answer is no, you don't recall him giving them to you?

Mrs. TRAVAGLIA. I do not recall.

Senator HATCH. Do you have any worksheets that would show any way that you could have arrived at those figures?

Mrs. TRAVAGLIA. No one has ever shown me any worksheets, and I never, ever took any files from the office. I don't work there any longer and didn't after January 1982.

Senator HATCH. You heard Mr. Watson yesterday, I presume—were you here?

Mrs. TRAVAGLIA. Yes, sir.

Senator HATCH. And as I recall his testimony, he said that you arbitrarily came up with these figures.

Mrs. TRAVAGLIA. Well, I never have. I would—he——

Senator HATCH. Did you hear that?

Mrs. TRAVAGLIA. Yes, sir, I did. And I deny it.

Senator HATCH. So your testimony here is that literally, you never came up with these figures; is that right?

Mrs. TRAVAGLIA. That's right. I did not.

Senator HATCH. You don't know what they represent.

Mrs. TRAVAGLIA. I don't know what they represent.

Senator HATCH. And as far as you know, you assumed that he sold some business for $250,000—or, excuse me—for $150,000, that he had a basis of $250,000 in?

Mrs. TRAVAGLIA. That very well may be. I don't know. I don't remember. I don't remember what made them up.

Senator HATCH. Do you remember asking Mr. Watson, "What do these figures represent, and why should I put them in?"?

Mrs. TRAVAGLIA. Well, I know we probably talked several times, but I don't know that I ever got any answers that I was satisfied with.

Senator HATCH. OK. That's all I have, Mr. Chairman.

The CHAIRMAN. Mr. Bingaman.

Senator BINGAMAN. I have no questions, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes passed in the first round; let me ask him if he has any——

The VICE CHAIRMAN. Mrs. Travaglia, I'll be very brief with you. If you'd look at the 1980 tax return, at some point in an exchange of questions, someone said you made out this entire return. And I wasn't quite clear that you had done that, I wondered if you'd go through the return and indicate—maybe we can do it very quickly. Is the handwriting on the first page of the return yours?

Mrs. TRAVAGLIA. Yes, sir; all of it.

The **Vice Chairman**. And on page 2, other than the signature lines at the bottom?

Mrs. **Travaglia**. Other than any of the signatures on the bottom.

The **Vice Chairman**. And schedules A and B?

Mrs. **Travaglia**. All of it; all of B.

The **Vice Chairman**. And schedule D?

Mrs. **Travaglia**. Part 2, schedule D, all of it. Part 1, schedule D, all of it. Schedule 10—Form 2119, none.

The **Chairman**. Would Senator Sarbanes yield on that?

The **Vice Chairman**. Yes.

The **Chairman**. Are you familiar with Mr. Watson's handwriting?

Mrs. **Travaglia**. Not enough to testify whether it is or isn't.

The **Chairman**. Are you familiar with Judge Claiborne's handwriting?

Mrs. **Travaglia**. No, sir.

The **Chairman**. Could you say who, as between the two of them, wrote the words, "Harry E. Claiborne" at the top?

Mrs. **Travaglia**. I really couldn't.

The **Chairman**. Thank you, Senator Sarbanes.

The **Vice Chairman**. When you put the packet back on Mr. Watson's desk, was there a form 2119 in that packet?

Mrs. **Travaglia**. I can't remember that. I don't know if it was or not.

The **Vice Chairman**. Well, this is not your handwriting. Did you have a form 2119 filled out in somebody else's handwriting at the time you were working on this return?

Mrs. **Travaglia**. I can't remember. In all honesty, I don't know.

The **Vice Chairman**. But in any event, form 2119 is not——

Mrs. **Travaglia**. Is not.

The **Vice Chairman** [continuing]. Is not your work?

Mrs. **Travaglia**. No.

The **Vice Chairman**. All right.

Mrs. **Travaglia**. "5695 Energy Credits" is all mine. And the supplements to the sale are mine down to the lefthand corner, there are the figures "677,612 net after commission, 362,820"—or 8,000—"cost of improvements," not mine, and a total, "314,812," not mine.

The **Vice Chairman**. Where did you get the information in order to do Supplement BL–3?

Mrs. **Travaglia**. It is merely copied from whatever they gave me—from whatever Mr. Watson gave me.

The **Vice Chairman**. From whatever Mr. Watson gave you.

Now if I could turn to exhibit 10 of the respondent, which was the yellow pages.

Mrs. **Travaglia**. Yes, sir.

The **Vice Chairman**. Now, these were pages handed to you by Mr. Watson in the hallway, that conversation you referred to?

Mrs. **Travaglia**. Yes, yes.

The **Vice Chairman**. Now, on the first page, do you know whose writing items 1 through 4 are?

Mrs. **Travaglia**. Above item 4, above "Dividends", I have crossed off the "Dividends" and written in "Interest Earned"; that's my writing.

Right below that, I have "Ditto, also plus interest earned in the amount of 345"; and 5 and 6 are mine.

The VICE CHAIRMAN. And do you know who wrote the rest of this page?

Mrs. TRAVAGLIA. No, sir, I don't.

The VICE CHAIRMAN. But it was given to you by Mr. Watson?

Mrs. TRAVAGLIA. Yes.

The VICE CHAIRMAN. And on the second page, the writing at the bottom, the tick mark on the left side, the tick marks and the crossouts, I take it, and new numbers are your writing, is that correct?

Mrs. TRAVAGLIA. Under taxes on Rancho Drive, I have "'Plus 726" and corrected that figure. Under Rancho Drive land, I have "Plus", and 1, 2, 3, and 4 are mine; and the righthand side figures are mine, on the bottom, in pencil.

The VICE CHAIRMAN. And then, on the following pages?

Mrs. TRAVAGLIA. Nothing; none.

The VICE CHAIRMAN. This is all somebody else's handwriting——

Mrs. TRAVAGLIA. Yes, sir.

The VICE CHAIRMAN [continuing]. That was given to you?

Mrs. TRAVAGLIA. Yes, sir.

The VICE CHAIRMAN. All right. Now, you say that you put this material back on Mr. Watson's desk——

Mrs. TRAVAGLIA. Yes, I did.

The VICE CHAIRMAN. Well, how far—this return was submitted on the 15th of June. Do you have any recollection of when you put it back on—put this material back on Mr. Watson's desk?

Mrs. TRAVAGLIA. No, and I don't see any dates anyplace that would indicate when.

The VICE CHAIRMAN. Did you say earlier in response to a question that it might have been back there about a month?

Mrs. TRAVAGLIA. It could possibly have been. I know it was there a little while.

The VICE CHAIRMAN. You do know—you recollect that it was there a little while.

Mrs. TRAVAGLIA. Yes, I do recollect it was there a little while.

The VICE CHAIRMAN. Thank you.

The CHAIRMAN. The committee has taken now 52 minutes. I hope we won't get into a second round. But the Senator from Virginia has indicated that he has an urgent question that he would like to ask.

Senator WARNER. I think all the questions have been urgent and very constructive, Mr. Chairman.

You worked on Norma Reis' return, and I think you indicated that she came and was quite concerned and had some tax problems.

Mrs. TRAVAGLIA. Yes, sir.

Senator WARNER. Did you solve the problems?

Mrs. TRAVAGLIA. Yes, sir.

Senator WARNER. Did she get a refund?

Mrs. TRAVAGLIA. I don't remember that.

Senator WARNER. There are two pieces of your testimony that I am not able to quite put together. You did 300 or 400 returns, but you didn't do the important returns because they were reserved for Mr. Watson, by him, to do himself; is that correct?

Mrs. **Travaglia**. That's correct.

Senator **Warner**. What is your definition of "important"?

Mrs. **Travaglia**. Well, probably at this point, a return that entailed maybe more than just earned income or token income: a return that, perhaps someone he knew very well, or a return that perhaps he had investment anticipation with.

Senator **Warner**. Would "important" also indicate perhaps an important person in the community?

Mrs. **Travaglia**. Probably is what I mean.

Senator **Warner**. Now, would Judge Claiborne fall into the category of an important person, using those criteria?

Mrs. **Travaglia**. I should certainly say so, yes.

Senator **Warner**. He would. Now, you heard Mr. Watson say yesterday that he felt the responsibility was on your shoulders. You have testified very candidly today that every instinct that you had compelled you to say this return was wrong—you so stated that to Mr. Watson—and that every instinct you had led you to the feeling you should contact the judge and try and help him straighten out some of the areas which you think were wrong.

Mrs. **Travaglia**. No, sir, I did not say that. I did not say I felt I should contact the Judge.

Senator **Warner**. Well, that he should be contacted.

Mrs. **Travaglia**. Jerry should have done something.

Senator **Warner**. The return was clearly wrong, in your judgment?

Mrs. **Travaglia**. Yes.

Senator **Warner**. So we have here a return that falls into the category of an important person; but for some reason, Mr. Watson didn't keep that return to himself to do, but he gave part of it to you, and your work came back in a very preliminary form, with clear expression from you that it needed more work, that it was wrong.

Have you ever thought that perhaps you have been used?

Mrs. **Travaglia**. Well, after hearing testimony yesterday, I think I was being—it was—I was being used; yes.

Senator **Warner**. Thank you.

The **Chairman**. Senator Heflin has asked——

Senator **Rudman**. Is Mr. Watson still under subpoena? Has he been excused?

Senator **Warner**. Yes; I asked yesterday that he be kept.

The **Chairman**. Senator Heflin, do you have a question?

Senator **Heflin**. The schedule D, the narrative portion dealing with the accounts receivable of the law practice that were handled were entered on the part I, which was short-term capital gains and losses.

Then there is a line down to part II, which is the long-term capital gains and losses. And there is a notation of "type here."

You were giving instructions to the typist to put it in at that part II, rather than part I?

Mrs. **Travaglia**. Not only to the typist, but if this was finished up and concluded and corrected, it belonged in long term.

Senator **Heflin**. Well, did the words "type here", or use of the word "type", was it placed there by you to indicate that your preliminary work had been done on schedule D?

Mrs. **Travaglia**. Only the work that I—well, preliminary yes, but not complete. And certainly not correct.

Senator **Heflin**. Was there any other tax preparer in Watson's Creative Tax Planning other than you?

Mrs. **Travaglia**. Not at the time I was there; no.

Senator **Heflin**. You are not a——

Mrs. **Travaglia**. Oh. I have to take that back. One of the secretaries that was hired in there at one time, he was training to do some tax work.

Senator **Heflin**. You are not a CPA that is licensed in Arizona?

Mrs. **Travaglia**. I am not. And I am not from Arizona.

Mr. **Goodman**. Mr. Chairman, may I inquire?

The **Chairman**. Just 1 minute. Let me see what Senator Heflin is doing.

Senator **Heflin**. Did you discuss Judge Claiborne's 1980 return with Linda Lamb or anyone else in connection with preparing the return?

Mrs. **Travaglia**. I did not.

The **Chairman**. Senator Rudman has one more question.

Senator **Rudman**. I didn't have a question. I just want to say, Mr. Chairman, I don't know what our schedule is and this witness is going to be excused shortly, but I think it is essential after hearing Mr. Watson's testimony and hearing this testimony, there is such an obvious conflict in that testimony. It is an outrageous conflict, and as far as I am concerned, we are going to have to have Mr. Watson back and have a little bit more to say to him.

And so I want to make it clear that as far as I am concerned, Mr. Watson ought to appear again before we are done.

The **Chairman**. Let me say for the record that Mr. Watson was not excused yesterday. I was temporarily absent and Senator Sarbanes was presiding at the conclusion of Mr. Watson's testimony, and under the ruling of the Chair, Mr. Watson was directed to remain; he is still under subpoena, and he is available.

Senator **Rudman**. Thank you, Mr. Chairman.

The **Chairman**. Now, Mr. Goodman, you had a question.

FURTHER REDIRECT EXAMINATION

Mr. **Goodman**. Mrs. Travaglia, do you think that Jerry Watson ran this tax return through in order to get his fee?

Mrs. **Travaglia**. Yes.

Mr. **Goodman**. Did you consider this to be a tax return when you put it on Mr. Watson's desk?

Mrs. **Travaglia**. Absolutely not.

Mr. **Goodman**. At the time that you were preparing the return, I believe you indicated you did not know who Judge Claiborne was. Is that correct?

Mrs. **Travaglia**. That is correct.

Mr. **Goodman**. And is it your testimony that you did not take into consideration at the time you were preparing the return that the return was being prepared for a Federal judge?

Mrs. **Travaglia**. No. Blame it on whatever, I just didn't—it didn't come to my mind.

Mr. **Goodman**. So is it your testimony, then, that you were treating this return in the same conscientious manner that you would the return of any other citizen?

Mrs. **Travaglia**. That I tried, yes; definitely.

Mr. **Goodman**. But you found that it was unusual to you because of the amount of moneys that were being reported and involved in the return. Is that correct?

Mrs. **Travaglia**. Yes.

Mr. **Goodman**. And it was that difficulty, as to how to treat those moneys, that you were addressing Mr. Watson for help?

Mrs. **Travaglia**. Yes.

Mr. **Goodman**. And Mr. Watson wouldn't help you at all?

Mrs. **Travaglia**. Well, he just kept putting it off. He never said: No; I will not help you. He just never did get around to it.

Mr. **Goodman**. I know, but he said to you: Well, we will do it tomorrow, or we will do it next week?

Mrs. **Travaglia**. Right.

Mr. **Goodman**. And then it finally got to a point that you just got through with the return the best you could and you laid it on Mr. Watson's desk?

Mrs. **Travaglia**. Yes, sir.

Mr. **Goodman**. Was Mr. Watson the type of person who would—do you know what "puffing" is?

Mrs. **Travaglia**. Yes.

Mr. **Goodman**. Was he a puffer?

Mrs. **Travaglia**. Yes, sir.

Mr. **Goodman**. Do you know what "hyping" is?

Mrs. **Travaglia**. I am not sure.

Mr. **Goodman**. Well, would he give people a sales pitch in order to——

Mrs. **Travaglia**. Oh, yes.

Mr. **Goodman** [continuing]. Make them feel very comfortable that he was doing the right thing and he was going to take care of them?

Mrs. **Travaglia**. Yes.

Mr. **Goodman**. And he was the type of person who would never indicate that he was going to do anything illegal with a client. Isn't that right?

Mrs. **Travaglia**. Oh, no, he never intimated that; no.

Mr. **Goodman**. But he was going to do whatever he could to get the best tax benefit?

Mrs. **Travaglia**. Take care of it. Take care of it.

Mr. **Goodman**. To take care of it. Is that a fair characterization of the way Mr. Watson does business?

Mrs. **Travaglia**. Yes, sir.

Mr. **Goodman**. Did Mr. Watson ever take advantage of clients?

Mrs. **Travaglia**. I think so.

Mr. **Goodman**. You want to give us an example?

Mrs. **Travaglia**. Well, there were many times that he loaned money to a client that was deficient, but took deeds back on their homes and eventually foreclosed.

Mr. **Goodman**. So in other words——

Mrs. **Travaglia**. I think that is taking advantage.

Mr. **Goodman**. I say that is taking advantage. Right.

Would you characterize this document that was filed with the IRS as being the type of document which would cause the IRS to raise their eyebrows and want to find out what was going on?

Mrs. TRAVAGLIA. Well, I think they should have thrown it out.

Mr. GOODMAN. You think they should have thrown it out?

Mrs. TRAVAGLIA. Oh, absolutely.

Mr. GOODMAN. You wouldn't characterize these pieces of paper that went to the IRS as being cunning, would you?

Mrs. TRAVAGLIA. No. If you are going to hide something, I think you could have found a better way of doing it.

Mr. GOODMAN. Thank you.

The CHAIRMAN. Mr. Chabraja.

While Mr. Chabraja is coming, let me recognize Senator Warner for one short question.

Senator WARNER. Were you familiar with the fee schedule?

Mrs. TRAVAGLIA. No, sir. I was not allowed to set fees.

Senator WARNER. Do you feel that this fee of $2,000 represented a fair charge for the work that was done?

Mrs. TRAVAGLIA. I do not.

Senator WARNER. Was it on the high side?

Mrs. TRAVAGLIA. It was.

Senator WARNER. Very high?

Mrs. TRAVAGLIA. It was.

Senator WARNER. Thank you.

The CHAIRMAN. Mr. Chabraja.

Mr. CHABRAJA. Thank you, Mr. Chairman.

RECROSS EXAMINATION

Mr. CHABRAJA. Mrs. Travaglia, you have testified that on at least one occasion but probably more, you stopped Mr. Watson and said that you needed help with this return.

Mrs. TRAVAGLIA. Yes, sir.

Mr. CHABRAJA. And Mr Goodman has suggested that it was the size of the dollars involved here that created a difficulty for you. That is not quite right, is it?

Mrs. TRAVAGLIA. It was part of it, sir, in that there was too much of a refund on this return.

Mr. CHABRAJA. The size of the refund was what disturbed you.

Mrs. TRAVAGLIA. Several things.

Mr. CHABRAJA. But the thing that made this return difficult for you to work on was the absence of relevant information, wasn't it?

Mrs. TRAVAGLIA. That would be part of it; yes.

Mr. CHABRAJA. OK. And you had, after telling Mr. Watson many times that you needed assistance, you finally gave him the return and the underlying papers, and you said to him, if I have your testimony correctly: This is wrong, it needs work. Didn't you say that?

Mrs. TRAVAGLIA. He was not there the day that I put it on his desk. But right previous to that, a day or so before, I said: "This return is not correct."

Mr. CHABRAJA. OK. And that followed shortly on the heels of your telling him many times that you needed help, right?

Mrs. TRAVAGLIA. Yes.

Mr. **CHABRAJA**. And his response to you, you have testified to many times, was: Later?

Mrs. **TRAVAGLIA**. Later.

Mr. **CHABRAJA**. And he told you in substance, did he not, not to make waves?

Mrs. **TRAVAGLIA**. On other matters he told me not to make waves.

Mr. **CHABRAJA**. What about on this one? Did he tell you not to make waves?

Mrs. **TRAVAGLIA**. I don't believe he ever said that on this.

Mr. **CHABRAJA**. Did he ever tell you not to rock the boat?

Mrs. **TRAVAGLIA**. On other matters.

Mr. **CHABRAJA**. On other matters?

Mrs. **TRAVAGLIA**. Yes, sir.

Mr. **CHABRAJA**. And the only thing he said here was, "Later?"

Mrs. **TRAVAGLIA**. Just "Later." And "I've got to be someplace," and, "Later."

Mr. **CHABRAJA**. Did you read that as don't rock the boat?

Mrs. **TRAVAGLIA**. Not really. I read that as just more put it off for a while.

Mr. **CHABRAJA**. What did he mean when he told you don't rock the boat?

Mr. **GOODMAN**. Mr. Chairman, I object, unless we have a foundation. Mrs. Travaglia indicates that he did not say that on this return, so I would like a foundation——

Mr. **CHABRAJA**. I am not implying otherwise.

Mr. **GOODMAN**. I would like a foundation as to when he said don't rock the boat for other persons and other circumstances.

The **CHAIRMAN**. I think it is fair to ask the witness what were the circumstances under which he would have made such a statement.

Mr. **CHABRAJA**. Mrs. Travaglia, what were the circumstances?

Mrs. **TRAVAGLIA**. About rocking the boat?

Mr. **CHABRAJA**. Yes.

Mrs. **TRAVAGLIA**. We had a tax client that routinely put his own money into his business to keep it going. I mentioned to him: "You are using that as earned income and that is capital."

Don't rock the boat. Do it exactly as we have done it and forget it.

Mr. **CHABRAJA**. Let me direct your attention—withdraw that question. Let me restate it

In other words, Mr. Watson was asking you to countenance an impropriety?

Mr. **GOODMAN**. Mr. Chairman, I object again, unless we have a foundation. I believe that is the testimony as far as this particular return is concerned. Maybe on other occasions that may be the case. But we need a foundation.

Mr. **CHABRAJA**. I think she just laid a foundation.

The **CHAIRMAN**. Well, if you direct your question to the incident about which she was testifying.

Mr. **CHABRAJA**. I most certainly am.

Mrs. Travaglia, my question about Mr. Watson asking you to countenance an impropriety is directed toward the incident which you just described having to do with some other taxpayer.

Mrs. TRAVAGLIA. I didn't believe for one minute he was trying to tell me that I was incorrect. He was merely saying you are stopping the flow of work, please do not do that, continue.

Mr. CHABRAJA. All right. Let me direct your attention once again to exhibit 10. Those are the yellow sheets that you have in front of you.

Mrs. TRAVAGLIA. Yes, sir.

Mr. CHABRAJA. And this will really be the last of my inquiry of you, Mrs. Travaglia. It looks to me like you are getting tired.

Mrs. TRAVAGLIA. I am.

Mr. CHABRAJA. We have heard much in these proceedings about your notation down at item 5 there, having to do with a business transaction concerning books, and something about fair market value wasn't used, and that if it was done a little differently it might be applied as some sort of contrary No. 2 income. I am just sort of restating that.

And it has been suggested in these proceedings that that means that that $88,500 in income somehow found its way to schedule D.

Is that what you intended when you wrote that note?

Mrs. TRAVAGLIA. No. I am pretty certain it wasn't.

Mr. CHABRAJA. You were talking, were you not, when you wrote that note about searching for some deductible item that might be applied against schedule C income?

Mrs. TRAVAGLIA. Well, because of the thing—excuse me—I remember about books, or a loss, and I can't remember anything about it, I believe that perhaps I was talking about a large loss of, whether it was a library book—or library books or business equipment, or what have you.

Mr. CHABRAJA. If you had a large loss that was run through schedule D, that would manifest itself in a deduction. True?

Mrs. TRAVAGLIA. After recapture.

Mr. CHABRAJA. After recapture. But certainly there was no thought in your mind that 88,500 of items labeled income belonged, under any stretch of the imagination, on schedule D?

Mrs. TRAVAGLIA. What I have to sort of repeat here now, item No. 2 is the schedule C item.

Mr. CHABRAJA. OK, thank you.

The CHAIRMAN. Thank you very much, Mrs. Travaglia.

Now you, of course, are under subpoena, and I don't think we will excuse you. You will remain available to the committee for the time being.

Mr. GOODMAN. Excuse me, Mr. Chairman. I did not hear the witness' last answer.

The CHAIRMAN. Can you repeat your last answer? Do you remember it?

Mrs. TRAVAGLIA. Item 2 is a schedule C item, which is miscellaneous income that has related expenses to it.

Mr. GOODMAN. May I inquire?

The CHAIRMAN. Yes, you may inquire.

FURTHER REDIRECT EXAMINATION

Mr. GOODMAN. There is no schedule C on the return, or on the work papers that you prepared?

Mrs. **Travaglia.** There is not.

Mr. **Goodman.** Thank you.

The **Chairman.** Mr. Goodman, will you call your next witness?

Mr. **Goodman.** We have a list, Mr. Chairman. I am going to, with the Chair's permission, call Mr. Clyde Maxwell before Mr. Lawrence Semenza.

The **Chairman.** Mr. Maxwell, will you raise your right hand? Do you swear that the testimony that you are about to give in this impeachment proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **Maxwell.** I do.

Mr. **Chabraja.** May I be heard in objection?

Mr. Maxwell was identified in the pretrial statement as an expert who would testify with respect to matters that it is my understanding have been excluded under the Chair's ruling with respect to the motion *in limine.*

Mr. **Goodman.** Mr. Chairman, it is our position that Mr. Maxwell will be qualified as an expert criminal defense tax lawyer and will be asked questions concerning procedure and, in his opinion, what should have happened as far as this return is concerned.

Mr. **Chabraja.** And that, Mr. Chairman, is exactly what we moved with respect to. There was a specific section in our motion with respect to Mr. Maxwell and his anticipated testimony, and my understanding of the Chair's ruling is that the motion was allowed in that respect.

The **Chairman.** Mr. Goodman, I think counsel for the managers makes a valid point. The Managers produced Mr. Wilson, who testified on certain technical aspects of the return.

If Mr. Maxwell is prepared to testify within that general scope, I think we would permit it. If we are going to talk about matters which are excluded by the order of the committee, then I think it becomes impossible to allow you to go forward.

Mr. **Goodman.** Mr. Chairman, I will represent as follows to the committee. That Mr. Maxwell, after being qualified, will impeach the testimony of Mr. Wilson as far as whether or not a return or a document of this nature being submitted to the IRS would, in fact, raise a red flag.

I believe that Mr. Wilson indicated that there is no reason to believe that unless this was picked up—I think, if that is appropriate.

The **Chairman.** On that basis we will let you go forward.

Mr. **Goodman.** Thank you, sir.

The **Chairman.** And within those limits.

Mr. **Goodman.** I understand.

DIRECT EXAMINATION

Mr. **Goodman.** Mr. Maxwell, please state your name.

Mr. **Maxwell.** Clyde R. Maxwell.

Mr. **Goodman.** Spell your last name for the record.

Mr. **Maxwell.** M-a-x-w-e-l-l.

Mr. **Goodman.** Where do you reside?

Mr. **Maxwell.** In Newport Beach, CA.

Mr. **Goodman.** And what is your occupation or profession?

Mr. **Maxwell.** I am an attorney.

Mr. GOODMAN. How long have you been an attorney?

Mr. MAXWELL. Since 1945.

Mr. GOODMAN. Where were you educated?

Mr. MAXWELL. At the University of Washington.

Mr. GOODMAN. Did you receive your undergraduate degree there?

Mr. MAXWELL. I received an undergraduate degree and LL.B.

Mr. GOODMAN. And after you graduated law school, where did you go to work?

Mr. MAXWELL. I was in private practice for 4 years in Seattle. Then I went to work for the Internal Revenue Service as an attorney with the chief counsel's Office at Los Angeles, CA. That was January 1, 1949.

I was moved to San Francisco in about 1952 with that office.

Mr. GOODMAN. That is with the Internal Revenue Service?

Mr. MAXWELL. The Chief Counsel's Office of the Internal Revenue Service.

And in 1955 or 1956, I became assistant regional counsel for enforcement of the San Francisco region. And I continued in that position until 1961, August, when I left the Service.

Since August of 1961, I have been engaged in the private practice of law, primarily in the defense of criminal tax cases.

Mr. GOODMAN. Mr. Maxwell, while you were with the Government as a prosecutor on behalf of the Justice Department and the Internal Revenue Service, what cases of substance will you tell this committee you prosecuted?

Mr. MAXWELL. Well, I was special assistant U.S. attorney, or special assistant, Attorney General Commissions, to do both trial work and grand jury work.

One of the principal cases that I can recall is Dave Beck. Another one was Mickey Cohen.

Mr. GOODMAN. All right. Who was Dave Beck?

Mr. MAXWELL. Dave Beck was the head of the Teamsters division—head of the Teamsters Union in the 1950's.

Mr. GOODMAN. And you were responsible for the prosecution of that case?

Mr. MAXWELL. I did the grand jury work on that.

Mr. GOODMAN. All right. And as far as the Mickey Cohen case, what kind of case was that?

Mr. MAXWELL. That was the second Mickey Cohen case so called, where he was convicted of failure to pay—attempt to evade and defeat income taxes by failure to pay. And that was in 1959, I believe. And I did the grand jury work on that one as well.

Mr. GOODMAN. Now, have you had the occasion to be present in court for the past several days?

Mr. MAXWELL. Yes, I have.

Mr. GOODMAN. Pardon me. In the Caucus Room.

Mr. MAXWELL. Here.

Mr. GOODMAN. Here is right.

Have you been present during the testimony of the witnesses concerning the 1980 tax return?

Mr. MAXWELL. I believe so. I was not here on Tuesday.

Mr. GOODMAN. All right. Have you heard the return described?

Mr. MAXWELL. Yes, I have.

Mr. GOODMAN. Have you seen a copy of the return?

Mr. **Maxwell**. I have seen a copy of the return, but I could not read the copy.

Mr. **Goodman**. All right. I'd like you to look at exhibit No. 27, which is before you.

Mr. **Maxwell**. All right. I have it in front of me.

Mr. **Goodman**. All right. Would you please look through it?

Mr. **Chabraja**. Mr. Chairman, while the witness is examining the tax return, if I may, I'd like to renew my objection.

The testimony to which Mr. Goodman refers was not in Mr. Wilson's direct examination at all. It was questioning by Mr. Goodman in his attempt to elicit information in support of his theory that Judge Claiborne should not have been prosecuted in any event, but that the returns should have been audited instead civilly by the Internal Revenue Service.

That very subject matter, he should not have been prosecuted, should not have been caught, was the specific subject of the motion *in limine* where we pointed out that the issue here is whether he intended to underreport his income in each of these years. And I submit once again that the Chair should consider excluding the testimony of Mr. Maxwell as proffered. I think it's wasting our time.

Mr. **Goodman**. Mr. Chairman, the testimony of Mr. Maxwell is going to the issue of intent, which I believe is going to be one of the ultimate issues that the honorable committee is going to have to decide. And I expect that Mr. Maxwell is going to testify that the filing of such a return would not be for purposes of defrauding the Government but rather would be a red flag and crying for an audit.

Senator **Rudman**. Mr. Chairman, would Mr. Goodman just repeat what he said once more because I may want to say something to the Chair before the Chair rules?

I don't understand what he just said. Would you say that again as to what this testimony is going to be?

Mr. **Goodman**. Yes. It is the intention of the testimony to go to the intent of the taxpayer; that this document being filed with the IRS would raise a red flag. Instead of being a vehicle to defraud the Government or to cheat the Government, it would automatically raise the eyes of the Internal Revenue Service upon receipt.

Senator **Rudman**. May I ask counsel a question?

The **Chairman**. Certainly.

Senator **Rudman**. Counsel, are you telling us that this man is going to testify because something was stupid or wasn't welcome?

Mr. **Goodman**. With all due respect——

Senator **Rudman**. I mean I'm asking a very serious question.

Mr. **Goodman**. Yes, and my——

Senator **Rudman**. Is that your point?

Mr. **Goodman**. My answer is going to be as serious as the question.

It's our position that willfulness requires the requisite mental state of bad purpose, the intent to do something with bad purpose. And I would submit that there is a distinction between the concept of—and I hate to use the word, but I will adopt your word—stupidity and willfulness.

Senator **Rudman**. So what counsel is going to argue to us is because is we accept on the face and take knowledge of the fact that this return is totally incapable of being accepted as being a serious filing, that there could be no mens rea, no intent.

Mr. GOODMAN. No. Our position is that it would go to one of the pieces in order to come to that conclusion.

Senator RUDMAN. All right. I just wanted to understand it.

Thank you, Mr. Chairman.

The CHAIRMAN. I think Mr. Goodman understands that he's on a very short leash in this matter. But I'm going to permit him to go ahead with a brief examination with an understanding that Mr. Chabraja may make a motion to strike if in fact it appears that we're not getting to the point very promptly that we need to go.

Mr. GOODMAN. I just have one or two questions, Mr. Chairman.

Mr. Maxwell, have you reviewed the document, exhibit No. 27?

Mr. MAXWELL. Yes, I have.

Mr. GOODMAN. Do you have an opinion as to whether such a document being received by the Internal Revenue Service would raise an audit?

Mr. MAXWELL. Yes, I have.

Mr. GOODMAN. And what's your opinion?

Mr. MAXWELL. It would raise an audit.

Mr. GOODMAN. Thank you.

The CHAIRMAN. Mr. Chabraja.

Mr. CHABRAJA. No inquiry, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Maxwell.

(Witness excused.)

The CHAIRMAN. Mr. Goodman, will you call your next witness.

Mr. GOODMAN. Mr. Lawrence Semenza.

Mr. CHABRAJA. Mr. Chairman, I would also move to strike the testimony as incompetent, an invasion of the province of the Senate, and obviously contrary to the facts of this case already in evidence where we know it didn't draw an audit.

I think the Chair should seriously entertain striking that testimony.

The CHAIRMAN. We will take that motion under advisement.

Mr. GOODMAN. Mr. Chairman, for purposes of following what the presentation of the evidence is on behalf of the judge, we are now into that area of the case involving character testimony.

The CHAIRMAN. And you understand we have a time limit in this area?

Mr. GOODMAN. I understand that we were given 1 hour, if I recall, and we were also permitted 10 character witnesses. Because of the hourly limitation, I've chosen to call less than 10 so they'll be more expansive should the committee have any questions for them.

The CHAIRMAN. Call your first witness.

Mr. GOODMAN. Mr. Semenza.

The CHAIRMAN. Mr. Semenza, will you raise your right hand.

Do you swear that the testimony you are about to give in this impeachment proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SEMENZA. Yes, sir, I do.

DIRECT EXAMINATION

Mr. **Goodman**. Please have a seat, and state your name and spell your last name for the record.

Mr. **Semenza**. My name is Lawrence J. Semenza, S-e-m-e-n-z-a.

Mr. **Goodman**. And, Mr. Semenza, where do you reside?

Mr. **Semenza**. In Reno, NV.

Mr. **Goodman**. What is your occupation or profession?

Mr. **Semenza**. I am an attorney.

Mr. **Goodman**. Where were you educated?

Mr. **Semenza**. I graduated from the University of Nevada in 1965. I attended the University of Utah, College of Law, and graduated in 1968.

Mr. **Goodman**. Did you take the Nevada Bar exam?

Mr. **Semenza**. Yes, sir, I did.

Mr. **Goodman**. When did you take the exam and when did you pass the exam?

Mr. **Semenza**. In 1968.

Mr. **Goodman**. Did you in fact go into private practice?

Mr. **Semenza**. Yes, I did in 1969

Mr. **Goodman**. All right. And how long did you remain in private practice?

Mr. **Semenza**. For 1 year.

Mr. **Goodman**. What happened at that time?

Mr. **Semenza**. I was appointed an assistant U.S. attorney in the district of Nevada.

Mr. **Goodman**. How long did you work in that capacity?

Mr. **Semenza**. From November 10 of 1970 until January of 1975, when I was nominated to be the U.S. attorney for the district of Nevada.

Mr. **Goodman**. And were you in fact the U.S. attorney for the district of Nevada?

Mr. **Semenza**. Yes, sir.

Mr. **Goodman**. Over what period of time?

Mr. **Semenza**. From January 1975 through December 2 of 1977.

Mr. **Goodman**. And since that time, what have you done?

Mr. **Semenza**. I've been in private practice.

Mr. **Goodman**. Do you know Harry Claiborne?

Mr. **Semenza**. Yes, sir, I do.

Mr. **Goodman**. When did you first meet Judge Claiborne?

Mr. **Semenza**. I first met Judge Claiborne in the fall of 1962 when I cut school to observe him defend a gentleman accused of murdering his girl friend.

Mr. **Goodman**. And what took place during that prosecution?

Mr. **Semenza**. Well, I saw what I considered to be an exceedingly memorable occasion and sparked my interest in attending law school.

Mr. **Goodman**. All right. And what was that?

Mr. **Semenza**. What was what, sir?

Mr. **Goodman**. What sparked your interest to go to law school?

Mr. **Semenza**. Oh, the dramatics and the excitement of the courtroom that Judge Claiborne presented during that trial, which he was successful in.

Mr. GOODMAN. All right. Did you have the occasion to be in court where Judge Claiborne was your adversary?

Mr. SEMENZA. Yes, sir, on numerous occasions.

Mr. GOODMAN. And how would you characterize his courtroom ability?

Mr. SEMENZA. Much better than yours. [Laughter]

Mr. GOODMAN. I have no further questions.

The CHAIRMAN. Do you want to move to strike that last response? [Laughter]

The Chair would entertain such a motion.

Mr. GOODMAN. No. We want the truth to come out, Mr. Chairman.

Mr. SEMENZA. His abilities—I mean it was always an exciting opportunity to prosecute a case in which he defended.

To start with, in 1970, when I first started prosecuting, it was not only exciting, but an awesome experience to go against him. Occasionally, I would win. More often, I would lose.

Mr. GOODMAN. And, Mr. Semenza, in the course of your dealings with then attorney Harry Claiborne——

Mr. SEMENZA. Yes, sir.

Mr. GOODMAN [continuing]. Were you able to form an opinion as to his character trait of honesty and integrity?

Mr. SEMENZA. Yes, I was.

Mr. GOODMAN. And what was that opinion?

Mr. SEMENZA. Well, when you deal with a defense counsel as a prosecutor, after a period of time, you get to know those that you can trust and there are those that you know you can't trust. And at that time, in dealing with him and prosecuting cases in which he defended, his character, his word was his bond.

Mr. GOODMAN. Did you have the occasion to appear in front of Judge Claiborne when he assumed the bench?

Mr. SEMENZA. Yes, I did.

Mr. GOODMAN. And do you know what his reputation in the community was as far as being honest and truthful in his judicial function?

Mr. SEMENZA. The only occasion I had the opportunity to appear before him was in a kidnaping trial that I was appointed to defend a young man in Reno. And he was then assigned to the Reno U.S. District Court. His reputation was excellent.

Mr. GOODMAN. If you had to capsulize or encapsulate his reputation, how would you describe it to this honorable committee?

Mr. SEMENZA. Well, over the number of years that I have dealt with him as an attorney prosecuting and then defending, I would consider his reputation to be impeccable.

Mr. GOODMAN. Thank you. No further questions.

The CHAIRMAN. Mr. Chabraja?

Mr. CHABRAJA. We don't have any questions of Mr. Semenza.

The CHAIRMAN. Thank you, Mr. Semenza.

Mr. SEMENZA. Thank you.

[Witness excused.]

The CHAIRMAN. Call your next witness, Mr. Goodman.

Mr. GOODMAN. Tim Cory.

The CHAIRMAN. Would you please raise your right hand.

Do you swear that the testimony you are about to give in this impeachment proceeding is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. CORY. Yes.

DIRECT EXAMINATION

Mr. GOODMAN. Mr. Cory, please state your name and spell your last name for the record.

Mr. CORY. Timothy S. Cory, C-o-r-y.

Mr. GOODMAN. Mr. Cory, where do you reside?

Mr. CORY. I reside in Las Vegas, NV.

Mr. GOODMAN. And how long have you lived in Las Vegas, NV?

Mr. CORY. I am a native. All my life.

Mr. GOODMAN. What do you do for a living?

Mr. CORY. I am an attorney.

Mr. GOODMAN. Where did you go to school?

Mr. CORY. My undergraduate education was at Brigham Young University in Provo, UT. I also obtained a master's degree from BYU in speech communications.

Mr. GOODMAN. Do you have any other educational experience?

Mr. CORY. I taught briefly, argumentation and debate and forensics, that's in the speech sense, at Brigham Young University. I then attended here in Washington, DC, the Washington College of Law, American University.

Mr. GOODMAN. How long have you been practicing law?

Mr. CORY. I received my degree in 1980.

Mr. GOODMAN. All right. And after you received your degree, what did you do?

Mr. CORY. At the time I was in law school, I served for 3 years as a legislative assistant to Senator Howard Cannon from Nevada, and also worked on the Senate Commerce Committee. I then worked, after graduating, briefly in the Las Vegas office for Senator Cannon. And I then, in either May or June of 1980, went to work for Judge Harry Claiborne as a law clerk.

Mr. GOODMAN. And what were your duties and responsibilities for him as a clerk?

Mr. CORY. Legal research, spent time in the courtroom as a bailiff, to do some drafting of memoranda and some opinions.

Mr. GOODMAN. Were you familiar with some of the opinions that Judge Claiborne wrote and authored at the time you were a clerk?

Mr. CORY. I'm familiar with all of his opinions during that time.

Mr. GOODMAN. All right. Would you be kind enough to tell the committee about one particular opinion referred to as in re: Grand Jury (Agosto), A-g-o-s-t-o?

Mr. CORY. That is an opinion written by Judge Claiborne regarding the privilege—might be called a familial privilege—against testifying against a family member. It is a 79-page decision or opinion. And it's been published.

Mr. GOODMAN. All right. Would you characterize it as being scholarly?

Mr. CORY. I would.

Mr. GOODMAN. How would you describe Judge Claiborne's energy as far as dispensing his judicial function?

Mr. Cory. Well, Judge Claiborne did, and I assume still does, have a passion for the Constitution of the United States and for the individual rights and liberties guaranteed thereunder and for the individual as well as the masses. And his energies were, in my view, unending in that regard.

Mr. Goodman. At the time you were clerking for him, was it—do you know whether or not Judge Claiborne was aware of the fact that the Federal authorities were investigating him?

Mr. Cory. He was aware, I believe from the start of my clerkship through 1982. I worked for him for 2 years.

Mr. Goodman. Do you believe that in any way he deviated from his judicial responsibility since he was under investigation at the time?

Mr. Cory. No, he did not. And I can think of one instance when his ruling was surprising to me under the circumstances.

Mr. Goodman. Would you tell us about that?

Mr. Cory. Yes. There was a time when I became a clerk in 1980, we had two sitting Federal judges in Las Vegas, Judge Claiborne and Judge Roger Foley. Both Judge Claiborne and Judge Foley had recused themselves from sitting on strike force cases and/or supervision of the special grand jury which is empaneled in Las Vegas particularly for organized crime cases.

What that meant was that there was no judge in Las Vegas to bring grand jury motions to and the like, to essentially supervise locally the special grand jury.

The county bar association, Clark County Bar Association, drafted and adopted a petition to the Federal judiciary in Nevada asking one or both of the judges to please take supervision of the grand jury, because of the hardship it was placing on having either visiting judges or Judge Reed in Reno supervise the special grand jury.

That particular petition matter was assigned to me for research. I researched what I felt to be the law under voluntary and involuntary recusal, under the two appropriate Federal statutes.

I do not believe that there was a hearing. I recall that Judge Claiborne, after reading the petition and deliberating made the decision that supervision needed to be taken back in Las Vegas and that he would do it. He was at that time the chief judge in the district of Nevada. He instructed me to do some drafting.

I asked him if he would please consider the political considerations of such a decision, or at least think about it for a minute. I was very concerned with what would happen publicly, since it was public knowledqe that he was under investigation. I believe at the time it was still thought he was being investigated by the strike force, although it was later learned it was the Public Integrity Section of the Justice Department.

He told me that he didn't care what public opinion was; he didn't care what the repercussions were. The case had been made for retaking supervision and the words, which I will never forget—he said to me, "If you can't take the heat, get out of the kitchen."

Mr. Goodman. Mr. Cory, could you characterize Judge Claiborne's reliance upon his staff and those who were working with him?

Mr. CORY. Yes; it was my experience that if Judge Claiborne came to trust you, that he would rely upon you implicitly. From time to time, this weighed upon me as a law clerk. And, as a matter of fact, Judge Claiborne and I discussed it once. He simply indicated, "Don't worry, I'm the one who is responsible for what happens, and if I didn't agree with the things that were being done, you can rest assured I would stop whatever was happening."

Mr. GOODMAN. Do you have an opinion as to his character trait for honesty, integrity, and truth and veracity?

Mr. CORY. I do.

Mr. GOODMAN. And what is that opinion?

Mr. CORY. My opinion as to his reputation, and my own opinion of those qualities, is that he is absolutely honest in his dealings particularly with the law and with what he is. You know exactly where you stand with Judge Claiborne at all times, and what Judge Claiborne is in appearance is what he truly is. In other words, I have always found it refreshing, the absence of hypocrisy in Judge Claiborne.

I have adopted perhaps a somewhat different life style than Judge Claiborne. I'm a family man and he's now a bachelor, has been, and we joke back and forth about how we spend our personal time. But I respect him for being what he is and never trying to appear anything else.

Mr. GOODMAN. I would like to ask you a question a little bit away from the character witness testimony. But did you ever have a conversation with Judge Claiborne, or were you aware of the fact as to whether or not Judge Claiborne ever told Joseph Wright that he had a new tax preparer?

Mr. CORY. There were messages—and I'm going to assume the dates that have already been testified to. I, on two occasions, spoke with a person indicating that he was Mr. Wright and that he was Mr. Claiborne's accountant. I did nothing more than take the messages down. One was urgent, that Mr. Wright had to talk to Mr. Claiborne, or Judge Claiborne, about his extension or his tax return. I passed the message on. Either I learned—and I don't know if it was from Mr. Claiborne directly or from the secretary, Judy Ahlstrom—that there had been another tax preparer who was—No. 1, that an extension had been filed; that was my first concern—and No. 2, that there was someone else who was preparing the return.

Mr. GOODMAN. Mr. Cory, would you like to see Judge Claiborne resume his judicial function?

Mr. CORY. I would. I believe that Judge Claiborne is exactly the type of individual who is needed as a U.S. district judge in the District of Nevada, particularly. Nevada was, up until 1980, 86 percent federally owned. We have great debate in Nevada about nuclear waste storage and testing, and about other Federal programs. Nevada has a very good Federal judiciary now, and particularly needs someone who will protect the rights of the individual citizen and who has the absolute courage to do so, regardless of the consequence. That is the quality I believe I admire most in Judge Claiborne.

Mr. GOODMAN. Thank you. No further questions.

The CHAIRMAN. Mr. Chabraja.

Mr. CHABRAJA. No questions, Mr. Chairman.

The CHAIRMAN. The Senator from Virginia.

Senator WARNER. You made the statement that he came to rely on people implicitly. Over what period of time would that relationship develop?

Mr. CORY. Sometimes it would take a while for him to warm up to an individual; sometimes it would seem to be more immediate.

Senator WARNER. In other words, you feel that he was a good judge of character himself?

Mr. CORY. I believe that he was, and I'm sure that he felt that he was.

The CHAIRMAN. Senator Bingaman.

Senator BINGAMAN. Could I just ask, during the 2 years you were clerking, from May or June 1980 until 2 years after that——

Mr. CORY. Yes; that would be May 1982.

Senator BINGAMAN. During that time, did Judge Claiborne handle any tax fraud cases? Did any come before his court?

Mr. CORY. There was a—a lot of the tax cases in Nevada are actually failure to pay or report a gaming tax. It's actually illegal wagering, but it's prosecuted as a tax offense for failure to report whatever the Federal wagering tax is. I think it's 2 percent. There was one of those cases.

Senator BINGAMAN. Based on what you observed during those 2 years, do you have an opinion as to the extent of Judge Claiborne's knowledge about the tax laws?

Mr. CORY. Yes; I do. I think that with respect to certain aspects of the law, such as criminal procedure, generally Federal procedure, and particularly evidence, he needed no refreshing. I mean, that was knowledge that was locked in and absolute.

It was my impression that in other areas of the law—and I can't say specifically income tax—but when specific questions of the law would come up, then he would essentially—he would be able to point his clerks in the direction for research, but he would review and renew his expertise in those areas each time.

The CHAIRMAN. Senator Pressler.

Senator PRESSLER. Well, your high regard for Judge Claiborne is clouded by one thing. A Federal judge, an attorney who would sign a tax return that looked like this tax return, how do you explain him signing a tax return that looks like this tax return looked?

Mr. CORY. Well, I believe that—I am certain that it was a mistake. I have thought during these proceedings of my own tax returns and will probably go back and review a few of them when I get back to Las Vegas.

Senator PRESSLER. But this was a return that was written in pencil, with scratches. A professional man signing a return like that?

Mr. CORY. That would not be out of character for Judge Claiborne. If it was presented to him to sign, and if he had—if he was trusting in the individual—one example is the—he didn't really appreciate or like taking time to report the different things that Federal judges need to report. One of the reports is a quarterly report of the age of cases for matters under submission, and anything that's been under submission for more than 90 days has to go on this what was called the 90-day list. It was a report that the law clerks usually compiled. They prepared it. We kept track of the age of the submitted matters. But it was not something that he enjoyed taking time to track down and report on.

Senator PRESSLER. Just to conclude, why are you so convinced that he wouldn't cheat on his income taxes? Is it a religious belief he had, or is it a conviction about his character, or can you imagine that he might have tried to cheat on his tax returns?

Mr. CORY. I can't imagine that he would have. No. 1, I don't believe that he needed to. There was no possible reason for him——

Senator PRESSLER. Well, he needed to because he was paying high alimony and he was—it looked to me like on his salary he was pretty tight. I mean, he was in a pretty tight situation, wasn't he?

Mr. CORY. I believe that he had sufficient assets, he had sufficient income.

Senator PRESSLER. He was paying $21,000 in alimony; that would be about half of what he was getting, wasn't it, as a Federal judge?

Mr. CORY. I believe his salary was in the seventies. Whatever his take-home was would be less.

Senator PRESSLER. But that's a pretty tight budget, the way it looks to me.

Mr. CORY. Well, I guess you're better informed than I am on those matters.

The CHAIRMAN. The Senator from Virginia for one question.

Senator WARNER. I address your attention to manager's exhibit No. 30. That is a letter purported to have been written by Judge Claiborne on the official stationery of the U.S. District court.

Would you read it aloud?

Mr. CORY. "Dear Frank: Would you please try to work out a way that I could get my money from Sid's estate. For the first time in my life, I am desperately in need of money. Regards, Harry."

Senator WARNER. Does that appear to be Judge Claiborne's handwriting?

Mr. CORY. I cannot—at one time I probably could have recognized——

Senator WARNER. Do you have any reason to dispute the authenticity of this document?

Mr. CORY. I don't.

Senator WARNER. Is it contrary to what you have just testified to?

Mr. CORY. Yes.

The CHAIRMAN. Thank you very much.

If you will remain on the stand, Senator Hatch wants to ask some questions.

Senator HATCH. Mr. Cory—you see, the real problem here, there are a lot of things that are bothering me about this whole matter. I suspect that some day this body, or at least the Judiciary Committee, really needs to look into some of the circumstances surrounding what's happened here. Because there are at least appearances of impropriety and other things that really are wrong surrounding the conviction of Judge Claiborne.

But the real problem here, as I think many see it, is that here you have a tax return that is so wild, and so completely off the wall, that it's going to be difficult for people to see how anybody who has been a trial lawyer, who has actually tried tax fraud cases—not that that gives you great expertise in tax law—and who has tried criminal cases, would have signed that unless he was an extremely busy human being and, just as you say, trusting of people that he liked and appreciated and believed in.

So I suspect that your testimony is important here because you knew him very well, you worked with him, you were a law clerk to him, and you have testified to his character.

But do you see any reason or way that he—is there any characteristic about Judge Claiborne that would lead you to believe that he would have signed something like that, having just received $750,000 for his home, with a base that was considerably lower? Wouldn't that have triggered some belief in him that he's got to pay some capital gains tax on the gain that was made? Do you see anythinq that would justify him signing that type of return?

Mr. CORY. I see it as consistent with his behavior when it comes to paperwork. As far as his triggering, whether or not it would trigger anything, as far as capital gains, I don't know.

Senator HATCH. Is he the type of person who worried about money all the time?

Mr. CORY. No.

Senator HATCH. Did he ever mention a need for money?

Mr. CORY. Not to me.

Senator HATCH. Did he seem to worry about whether his living standard was low or high or whatever?

Mr. CORY. No. I don't think he really cared about his living standard.

Senator HATCH. Did he seem to worry about what kind of car he drove or what kind of restaurants he went to or what kind of home he lived in?

Mr. CORY. Well, he did—he did drive a nice car and he did—although he also had as probably his favorite vehicle was a 1971 GMC four-wheel drive pickup. He came from poverty, or from very modest means. The things that he enjoyed spending his time doing really did not require a large amount of money. Those things would be hunting and fishing and those types of things. He continued to enjoy that and do that all the time that I have ever known him.

Senator HATCH. That's all I have.

The CHAIRMAN. One last question from the Senator from Virginia.

Senator WARNER. I thank the indulgence of the Chair.

I am going to refer to you a decision of the Ninth Circuit Court of Appeals affirming a decision rendered by Judge Claiborne, which was unreported. You mentioned that you only knew of one case, or gave the impression that during your term, he did not handle cases of the nature before us.

Let me read you a summary of the Circuit Court's evaluation of this case. This case involved filing false and fraudulent returns, reconstruction of income, net worth and expenditure method, circumstantial evidence. The court of appeals upheld the taxpayer's conviction of filing a false and fraudulent income tax return and held that the Government's use of the net worth and expenditures method of proof was sufficient to establish that the taxpayer had received taxable income from illegal skimming of slot machines, of which he was manager. It goes on to describe the case which, in many respects, involves the very elements that are before this committee today. And Judge Claiborne ruled in that case and his decision was upheld by the circuit court.

The CHAIRMAN. Senator Warner, will you identify the name of that case and the date?

Senator WARNER. Yes. The case was United States of America, appellee, versus James C. Hamilton, Appellant, U.S. Court of Appeals, ninth Circuit, dated April 30, 1980.

Mr. CORY. Senator, that case would have been tried probably a year earlier, and that is a case that came down from the ninth circuit a few months before—about a month before I began my clerkship.

Senator WARNER. It was just a month before, so you might not have been familiar with this opinion.

Mr. CORY. No; as a matter of fact, I'm not familiar with it.

Senator WARNER. Thank you.

The CHAIRMAN. Thank you very much.

Senator HEFLIN. May I ask three questions?

The CHAIRMAN. You can put the first one orally, and the second two in writing.

Senator HEFLIN. How do you describe Judge Claiborne's ability to handle more than one matter at a time? I mean, could he handle the cases, and other things and was it in an orderly fashion, prepare for them, or—there are some people that have almost, get consumed, and their concentration is so consumed on one matter, or one or two matters, that they seem to not be able to handle some other matter at the same time.

Is any of that aspect present in the habits of Judge Claiborne?

Mr. CORY. Yes. Sometimes he could get totally preoccupied, particularly in sentencing. I have had discussions with him, that I'm sure he won't remember, because he was contemplating a sentencing that was coming up, and I would—he would nod, and so on and so forth.

And I believe I had gotten authority to go ahead, and go a certain way, and later discover that the conversation didn't register with him. And as a matter of fact, it got to the point where on mornings when someone was going to be sentenced, I wouldn't even talk to him until the afternoon, because he was so preoccupied with sentencing.

Senator HEFLIN. My staff tells me I am guilty of the same thing. That is all.

The CHAIRMAN. Thank you very much.

[Whereupon, the witness was excused.].

The CHAIRMAN. Mr. Goodman, will you call your next witness.

Mr. GOODMAN. Thank you. Mr. Ed Kane.

The CHAIRMAN. Will you raise your right hand.

Do you swear that the testimony that you are about to give in this impeachment proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. KANE. I do.

DIRECT EXAMINATION

Mr. Goodman. Please state your name, and spell your last name for the record.

Mr. Kane. My name is Edward Kane. K-a-n-e.

Mr. Goodman. Mr. Kane, where do you reside?

Mr. Kane. In Las Vegas, NV.

Mr. Goodman. How long have you lived there?

Mr. Kane. Since 1973.

Mr. Goodman. What do you do for a living?

Mr. Kane. I'm an attorney.

Mr. Goodman. Where did you go to law school?

Mr. Kane. I went to law school at St. Johns University, New York City.

Mr. Goodman. And where did you go to undergraduate school?

Mr. Kane. Manhattan College, also, New York City.

Mr. Goodman. Have you had any other formalized training?

Mr. Kane. I studied at a seminary for the priesthood for 3 years, prior to my undergraduate and law school studies.

Mr. Goodman. When you came to Nevada, when did you take the bar?

Mr. Kane. I came to Nevada as an attorney admitted to the bar in New York State in 1973, and as an attorney with the Judge Advocate General's Corps of the U.S. Air Force.

I served at Nellis Air Force Base in Las Vegas, NV, for 4 years, from 1973 to 1977.

Mr. Goodman. And when you left that employ, what did you do?

Mr. Kane. When I left that employ, I worked for the Clark County district attorney as a deputy district attorney, later chief deputy district attorney from 1977 to 1980.

In 1980, I joined the staff of the U.S. attorney's office for the district in Nevada as an assistant U.S. attorney. In 1981, I was made chief assistant U.S. attorney for the district of Nevada, and served in that post until July 5 of this year.

Mr. Goodman. Did you have the occasion to appear before Judge Claiborne?

Mr. Kane. I appeared before him as a Federal attorney. I also opposed him in court as an attorney with the district attorney's office in Clark County.

Mr. Goodman. In the course of your relationship with him, did you have an occasion to form an opinion as to his character trait of honesty and integrity?

Mr. Kane. I certainly did.

Mr. Goodman. And what is that?

Mr. Kane. My opinion of Judge Claiborne's honesty and integrity, both based upon my experiences with him as an adversary and as a judge, is that if Judge Claiborne looked me in the eye, as he always does when he speaks to you, and if he told me that something was true, I would, without hesitation, stake my life upon it.

Mr. Goodman. Were there specific occasions where you had to judge whether or not Judge Claiborne was acting with judicial integrity?

Mr. Kane. There were a few. One that stands out in my mind is that we undertook, in the district of Nevada, an undercover operation of an ABSCAM type nature. That is, it was an undercover operation which targeted political corruption.

That investigation resulted in the indictment, and later, conviction, of several very prominent politicians in Nevada, including our senior State senator, Floyd Lamb. The *Floyd Lamb* case was originally assigned to Judge Claiborne.

Judge Claiborne had, some years earlier, represented Mr. Lamb in an unrelated litigation. At the time that the assignment was made, Judge Claiborne, without any prompting on the Government's part, called myself and the other Government prosecutor to his chambers, to make sure that we recalled that he had once represented Senator Lamb, and to ask us if we thought that he should voluntarily recuse himself from the case.

My response, again, based on my experience with Judge Claiborne and based on my opinion of his integrity, was that if he felt that the appearance of propriety required that he excuse himself, he would certainly do so, but, that as far as I was concerned, both the Government, and Senator Lamb, would get a fair shake, and no more and no less, if Judge Claiborne remained on the case.

He later did excuse himself, based upon a desire to avoid even the appearance of impropriety.

Mr. GOODMAN. Mr. Kane, when Judge Claiborne was sitting on the bench, actively, was there a common knowledge in the Las Vegas community, that Joseph Yablonsky, the special agent in charge of the FBI, was out to get him?

Mr. KANE. Yes; there was.

Mr. GOODMAN. And did you ever have, did you ever hear Joseph Yablonsky refer to Judge Claiborne?

Mr. CHABRAJA. Objection, Mr. Chairman. It seems to me, once again, that this question and the information which it seeks to elicit was precluded by the chairman's ruling.

Mr. GOODMAN. Mr. Chairman, it goes solely to the issue of intent, and state of mind, at the time that the activity which is being charged took place.

Mr. CHABRAJA. This witness, as I understand, is being called as a character witness.

The CHAIRMAN. He is here as a character witness, and the question of targeting was excluded, so I think we ought to stay away from that.

Mr. GOODMAN. Mr. Kane, would you like to see Judge Claiborne resume his duties as an active Federal judge?

Mr. KANE. I would. I stated to many people at the time that Judge Claiborne was undergoing both of his trials, that as a prosecutor, I would not have hesitated to appear again in front of Judge Claiborne, on behalf of the Government, on the morning after his trial concluded.

It has been one of the great privileges of my professional life to have practiced in front of Judge Claiborne. It is a privilege that I hope some day to enjoy again.

Mr. GOODMAN. Thank you.

The CHAIRMAN. Mr. Chabraja.

Mr. CHABRAJA. We have no questions of this witness.

The CHAIRMAN. Thank you very much.

Mr. KANE. Thank you, Mr. Chairman.

[Whereupon, the witness was excused.].

The CHAIRMAN. Call your next witness.

Mr. GOODMAN. Leland Lutfy.

The CHAIRMAN. Will you raise your right hand.

Do you swear that the testimony you are about to give in this impeachment proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. LUTFY. I do.

DIRECT EXAMINATION

Mr. GOODMAN. Please state your name, and spell your last name for the record.

Mr. LUTFY. Leland Edward Lutfy. L-u-t-f-y.

Mr. GOODMAN. Mr. Lutfy, where do you reside?

Mr. LUTFY. Las Vegas, NV.

Mr. GOODMAN. And what is your occupation or profession?

Mr. LUTFY. I'm an attorney.

Mr. GOODMAN. Where were you educated?

Mr. LUTFY. I went to the University of Denver in Denver, CO, and to Suffolk University Law School in Boston, MA.

Mr. GOODMAN. Do you belong to any association or groups related to the judiciary?

Mr. LUTFY. I just recently—well, in fact, October, my term will expire as a lawyer-delegate from Nevada to the Ninth Circuit Judicial Conference.

Mr. GOODMAN. And do you know Harry Claiborne?

Mr. LUTFY. Yes; I do.

Mr. GOODMAN. Have you had the occasion to have professional contact with Judge Claiborne?

Mr. LUTFY. Yes; I have.

Mr. GOODMAN. Would you tell the honorable committee what type of relationship you have had with him over the years.

Mr. LUTFY. Well, I first met Judge Claiborne when I prosecuted a major drug smuggling case. He was the defense attorney. I then prosecuted a number of cases in front of him when I was assistant U.S. attorney up in Reno, NV, and then, upon my leaving the U.S. attorney's office, I have defended one criminal case in front of him when he was sitting as a judge.

Mr. GOODMAN. All right. As a result of your contact with him, have you ever seen him play favorites?

Mr. LUTFY. Never. To the—well, as a Government prosecutor, I always liked to try cases in front of him because he's a trial attorney's judge. He lets you try your case. He is always—he was always fair to me as a prosecutor. He was fair to me as a defense attorney.

Mr. GOODMAN. Have you ever seen him engage in any type of conduct which could be deemed to be unethical?

Mr. LUTFY. Never. He is one of those accessible judges, which a lot of them are not. You could go in and you could talk to him, obviously with opposing counsel, but he would listen to you, he would give you that opportunity to present certain matters to him of a procedural nature, in chambers; but he never played favorites and was always fair.

Mr. GOODMAN. Do you have an opinion as to his legal scholarship?

Mr. LUTFY. Yes. I have tried a number of cases in front of him, been successful with them, have had motions in front of him, have had him had to rule on those motions. He's a fine judge.

Mr. GOODMAN. Have you been able to form an opinion as to his character trait for honesty and integrity?

Mr. LUTFY. Yes. In all three instances. Dealing with him as a defense attorney, he never turned me around. When I was a prosecutor and he was on the defense side, we were negotiating matters or discussing matters—in my capacity as a prosecutor and as a defense attorney, I have the highest opinion of the judge.

Mr. GOODMAN. Thank you.

The CHAIRMAN. Mr. Chabraja.

Mr. CHABRAJA. No questions.

The CHAIRMAN. Thank you very much, Mr. Lutfy.

(Whereupon, the witness was excused.).

Mr. GOODMAN. Hank Greenspun.

The CHAIRMAN. Mr. Greenspun, will you raise your right hand. Do you swear that the testimony you are about to give in this impeachment proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GREENSPUN. I do.

DIRECT EXAMINATION

Mr. GOODMAN. Please state your name and spell your last name for the record.

Mr. GREENSPUN. Herman Milton Greenspun. G-r-e-e-n-s-p-u-n.

Mr. GOODMAN. Mr. Greenspun, where do you reside?

Mr. GREENSPUN. Clark County, NV.

Mr. GOODMAN. And how are you employed?

Mr. GREENSPUN. I'm the publisher of the Las Vegas Sun. Editor of the Las Vegas Sun.

Mr. GOODMAN. And how long have you been the publisher and editor of the Las Vegas Sun?

Mr. GREENSPUN. Thirty-six years.

Mr. GOODMAN. What is the Las Vegas Sun?

Mr. GREENSPUN. It's a daily newspaper, morning newspaper.

Mr. GOODMAN. You have to speak into the microphone. In your capacity as the editor and publisher of the Las Vegas Sun have you had the occasion to form an opinion as to whether Judge Claiborne's conduct has had a derogatory effect on the integrity of the judiciary in the Nevada community?

Mr. GREENSPUN. I have an opinion, but the man is sitting here in the custody of two marshals, so I don't know how prudent it would be of me to be too laudatory. But I will say this: I've known Judge Claiborne for 40 years, ever since he got out of the Air Force base, and, I've seen him as a deputy district attorney, a deputy city attorney. I've seen him as a criminal defense attorney, one of the foremost in the country. I've seen him as a Federal judge. And I will state this for the record: even though I'm aware of what's going on in the Senate today, I would say never before—we've always been in conflict in the 40 years, far more conflict than agreement.

I've opposed him many times when he was the foremost criminal defense lawyer. But I will state, for the record, that probably—and I'm aware of everything that's going on here because we were the very first ones to initiate the investigation. I had Judge Claiborne into my office, with a team of reporters, many times, long before the Government started on him.

When I found out what the Government was doing, I never before ever had more reason to express, openly, my respect, my admiration, and my gratitude to this man, for having survived, to sit here before this honorable tribunal, as a last resort to seek vindication, and, if he does, it will not only be vindication for this man. It will be vindication for the checks and balance system of this Government, for the judiciary, for the third branch of Government, which was sadly, sadly being destroyed, not only in the State of Nevada, but I'd say, in many areas of the country.

You asked me about a man's reputation. I'll tell you this: No one could have withstood what the Government has done to this man.

I see Senator Hatch here for whom I have a great deal of respect, probably as decent, as honest a human being as you can find. But Senator, you would not have had a chance in Nevada. You wouldn't have had a chance in Utah, if the Government had sent in an agent in charge of the FBI, to bring law and order to the State of Utah.

Because this special agent told me, practically upon the day he arrived in Nevada—and before I tell you what he said about the people in your State, he stated that all the judges in the State of Nevada are a bunch of crooks. He said, "All your elected officials are a bunch of crooks."

And when he talked about elected officials, he talked about the highest——

The CHAIRMAN. Mr. Greenspun, I do not want to interrupt you, but you are here to tell us about Judge Claiborne's character.

Mr. GREENSPUN. This is part of Judge Claiborne, Your Honor.

The CHAIRMAN. I want you to feel free to say anything that you want to say on the subject that you are here to talk about.

You mentioned the fact you were concerned because there were Federal marshals present. I want you to know that in this room, John Dean——

Mr. GREENSPUN. Would you speak louder, Your Honor. I'm an old man. I'm deaf.

The CHAIRMAN. In this room, John Dean felt free to talk about a "cancer on the presidency," and in this room, Colonel Butterfield felt free to testify about the recording devices in the White House.

Mr. GREENSPUN. I was here during that hearing.

The CHAIRMAN. Well, then you know this is a room where you can speak freely, and we want you to speak freely, but we would like you to speak on the subject that you are here to talk about, and that is the question of the character of Judge Claiborne.

Mr. GREENSPUN. Well, I'm telling you how you—how do you determine character? A man's reputation, I imagine, is fashioned by the forces that he's subjected to daily, and for 4 years, this man has been subjected to an FBI director, who said he was going to hang

Claiborne in that corner, long before he ever knew Judge Claiborne committed a crime. He had pictures, and news stories of all the scams that he had performed. He was the "king of sting." Joseph Yablonsky. Director Webster sent him in.

He had all his exploits in Florida on the wall, and he had a big vacant spot, and the second day he was in Nevada, when I visited with him, he says, "I'm going to hang Claiborne up there."

And then through selective leaks to the press, to the media, to news stories and newspapers and magazines, he so poisoned the entire environment about this man, that nobody can form an objective judgment of him.

The CHAIRMAN. Well, now, you are here to give us an opportunity to form an objective judgment. So what we want to do is hear about Judge Claiborne, not about other people. Mr. Goodman, can you——

Mr. GOODMAN. Yes. I will try to direct Mr. Greenspun.

Do you have an opinion, Mr. Greenspun, as to Judge Claiborne's reputation in the community for truth and veracity, and honesty and integrity?

Mr. GREENSPUN. I have.

Mr. GOODMAN. And what is that opinion?

Mr. GREENSPUN. I think as a judge he's probably—and I'm an attorney myself—I think as fair, and he's objective, as compassionate, as any judge could possibly be.

I have met people in life who might be of better character; I have met people who are a lot worse. I'd say he's about average, with all the frailties of human beings. And I discussed with him some of these subjects we're talking about now, how his character is being besmirched, and he says, "What can we do about it?" And I said, "I intend to do something about it." And I went to see the Attorney General of the United States.

Mr. GOODMAN. Let me ask you this Do you believe that he is a man of integrity? Do you believe he is a man of integrity?

Mr. GREENSPUN. As a Federal judge, there is absolutely no question in my mind he has tremendous integrity, tremendous fairness, and he is probably one of the hardest working judges—and I've been acquainted with many of them—in the Federal judiciary today.

Mr. GOODMAN. Thank you.

The CHAIRMAN. Mr. Chabraja.

Mr. CHABRAJA. We have no questions.

The CHAIRMAN. Thank you very much, Mr. Greenspun.

Call the next witness, Mr. Goodman.

Mr. GOODMAN. Mr. Chairman, at this time I would proffer as evidence an official document entitled, "Hearings Before the Committee on the Judiciary, United States Senate, 95th Congress, 2nd Session, Concerning the Nomination of Harry E. Claiborne and the Comments of Senators Laxalt and Cannon from Nevada."

The CHAIRMAN. The committee will accept that.

(Whereupon, Claiborne exhibit No. 24 was received in evidence.)

Mr. GOODMAN. Mr. Joseph Wright.

The CHAIRMAN. Mr. Wright, you have been previously sworn in this proceeding, and you understand that your previous oath is still binding upon you and that the testimony you will give now will be sworn testimony.

Mr. GOODMAN. Have a seat, Mr. Wright.

The CHAIRMAN. Mr. Goodman, let me just say this to you. We have advised Mr. Greenspun that we may have some further need for him, and he should not leave the city.

Mr. GOODMAN. All right. May I do that at this time? He is hard of hearing.

The CHAIRMAN. Yes.

[Pause.]

Mr. GOODMAN. May the record reflect that I have so advised him.

The CHAIRMAN. Thank you, Mr. Goodman.

DIRECT EXAMINATION

Mr. GOODMAN. Mr. Wright, you will recall what seems to be about 100 years ago, you were on the witness stand, and you were being asked questions about the loss or misplacement of documents from your office; do you recall that?

Mr. WRIGHT. Yes, sir.

Mr. GOODMAN. And you indicated that you did not believe that you lost any records or misplaced any records, or had any records inadvertently destroyed; isn't that correct?

Mr. WRIGHT. That's right, sir.

Mr. GOODMAN. All right. Now, do you recall being interviewed by a Mr. Craig Bitterman, a government agent—I believe, an FBI agent—on or about January 4, of 1983?

Mr. WRIGHT. I don't recall that name, sir, no, sir.

Mr. GOODMAN. Well, do you recall that interview, Mr. Wright?

Mr. WRIGHT. I recall there was an interview.

Mr. GOODMAN. And do you recall at that point in time that you told Mr. Bitterman that, despite a thorough search, you could not locate schedules or worksheets which would have been prepared for Judge Claiborne for 1974 and 1975 tax returns?

Mr. WRIGHT. I believe I possibly told him that.

Mr. GOODMAN. Do you recall that when you were interviewed by Mr. Bitterman on January 4, of 1983, that you stated to him that those records which he was questioning you about which pertained to Judge Claiborne were most likely misplaced, or had been inadvertently destroyed?

Mr. WRIGHT. I could have said that.

Mr. GOODMAN. Well, when you say you "could have said that," does that mean to say that you did say it or you didn't say it?

Mr. WRIGHT. I would say that I did say it. It is in the transcript.

Mr. GOODMAN. Well, when you say, "It is in the transcript," what transcript?

Mr. WRIGHT. Of a trial, or a letter that he showed me.

Mr. GOODMAN. Who showed you?

Mr. WRIGHT. I don't know who showed it to me.

Mr. GOODMAN. Well, have you ever seen—do you know what an FBI 302 form is?

Mr. WRIGHT. Not particularly.

Mr. GOODMAN. May I approach the witness?

The CHAIRMAN. Surely.

Mr. GOODMAN. I would like to show you, Mr. Wright, what is referred to as an FD-302 and ask you whether or not you have ever seen this particular document.

Mr. WRIGHT. I don't recall. I don't recall seeing this, sir.

Mr. GOODMAN. All right. Now, please read the document to yourself ana tell me whether or not that refreshes your recollection that you told Craig Bitterman of the FBI on January 4, 1983 that most likely you misplaced, or lost, or inadvertently destroyed certain of Judge Claiborne's tax data.

[Pause.]

Mr. WRIGHT. I would assume that I told him this, sir.

Mr. GOODMAN. When you say that, you assume that you told him this, isn't it a fact that that's what the document says?

Mr. WRIGHT. That's what the document says.

Mr. GOODMAN. And you don't have any independent recollection as to whether or not you told him that; correct?

Mr. WRIGHT. No, sir.

Mr. GOODMAN. And yet, when you read the document, and you see what it says, then you are ready to testify readily that you assume that is in fact what happened?

Mr. WRIGHT. I have no reason to doubt that.

Mr. GOODMAN. You have no reason to doubt an official FBI report?

Mr. WRIGHT. That's right, sir.

Mr. GOODMAN. Thank you.

I have no further questions of Mr. Wright. I don't know whether there is going to be any further examination, Mr. Chairman, but I would like the record to reflect that the question was based on information received the first time by Judge Claiborne or his counsel today, a report that had not been made available to us at any prior proceeding.

Senator PRYOR. Mr. Chairman, could we all have copies of this, or do we have copies of it?

Mr. CHABRAJA. Mr. Chairman, I would like to add one comment. We believe that this document is referenced in the October transcript of the post-trial motion practice and that Mr. Goodman's statement is incorrect, that he had that document or had it read into the record in the October session of the post-trial proceedings in the criminal case.

Mr. GOODMAN. If I misspoke myself, I apologize. I could advise the Chair that I had no recollection of ever seeing this document before today, and it certainly was not available for us for use during the trial, either the first trial or the second trial of Judge Claiborne.

Mr. HUGHES. Mr. Chairman.

The CHAIRMAN. Mr. Hughes.

Mr. HUGHES. I just have a couple questions, Mr. Chairman.

CROSS-EXAMINATION

Mr. Wright, you previously testified that you had destroyed some records, in fact, that pre-date 1976.

Mr. WRIGHT. That's right, sir.

Mr. HUGHES. Are they the records that you referred to that you destroyed?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. They were old records?

Mr. WRIGHT. Yes, sir.

Mr. HUGHES. They were at the time that you moved to a new office address in Nevada?

Mr. WRIGHT. That's right, sir.

Mr. HUGHES. Did you destroy any current records at that time?

Mr. WRIGHT. No, sir.

Mr. HUGHES. I see. And all the records that you have testified from today as being records for that 1979 return were in fact in your file——

Mr. WRIGHT. That is right.

Mr. HUGHES [continuing]. None of those were misplaced?

Mr. WRIGHT. No, sir, not to my knowledge.

Mr. HUGHES. I have no further questions.

The CHAIRMAN. Mr. Goodman.

REDIRECT EXAMINATION

Mr. GOODMAN. You don't know whether or not any documents were misplaced, do you?

Mr. WRIGHT. There were no documents misplaced to my knowledge.

Mr. GOODMAN. But you don't know whether or not there were any documents misplaced or lost or destroyed, do you?

Mr. CHABRAJA. Mr. Chairman, this has been asked and answered. Mr. Goodman had adequate opportunity, and as a matter of fact——

Mr. GOODMAN. I will withdraw the question.

The CHAIRMAN. The question is withdrawn.

Mr. CHABRAJA. Thank you.

The CHAIRMAN. Thank you very much, Mr. Wright.

Senator HEFLIN. I would like to ask him——

The CHAIRMAN. Hold on, Mr. Wright.

Senator HEFLIN. The letter of April 11——

The CHAIRMAN. You are familiar with the April 11 letter.

Mr. WRIGHT. Yes, sir.

Senator HEFLIN [continuing]. 1980, are you saying now, after this, that you never received this, or that you just do not know?

Mr. WRIGHT. I do not know.

The CHAIRMAN. Thank you, Mr. Wright.

Mr. WRIGHT. Thank you.

The CHAIRMAN. Is there any need for Mr. Wright to remain in the city?

Mr. GOODMAN. I believe that he is the witness for both parties. As far as respondent, Judge Claiborne, is concerned, we would excuse him.

The CHAIRMAN. What is the position of the managers?

Mr. CHABRAJA. Mr. Wright is excused as far as we are concerned.

The CHAIRMAN. Does any member of the committee wish to have him remain?

[No response.]

The CHAIRMAN. Mr. Wright, you are therefore excused.

[Whereupon, the witness was excused.]

The CHAIRMAN. Will you call your next witness, Mr. Goodman?

Mr. GOODMAN. Mr. Skelton.

The CHAIRMAN. Do you swear that the testimony you are about to give at this impeachment proceeding will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. SKELTON. Yes, sir.

Mr. GOODMAN. Mr. Chairman, I would like to ask for some direction from the Chair. This particular witness is one of three Government witnesses that we have been permitted to have subpoenaed on the issue of the shaping of the testimony of witnesses. I would respectfully request the privilege of being able to question Mr. Skelton as a hostile witness.

Mr. HUGHES. Mr. Chairman, the managers' position would be that the appropriate process would be for Mr. Goodman to proceed with this witness; then, if it is determined that he is hostile, at that point we can declare him a hostile witness.

The CHAIRMAN. I couldn't quite hear you, Mr. Hughes.

Mr. HUGHES. It would be our position that the appropriate procedure would be for the witness to be questioned by Mr. Goodman and then if in fact he finds he is a hostile witness, at that time ask to have him declared a hostile witness and proceed as if he could cross-examine. That would be the appropriate procedure, it would seem to us.

The CHAIRMAN. I believe that under the circumstances in which we have permitted this witness to be called at all, we are searching in an impeachment proceeding for the maximum amount of illumination.

I am going to permit you to go ahead, Mr. Goodman, but I am going to keep you under very close surveillance.

Mr. GOODMAN. I am used to it, Mr. Chairman.

The CHAIRMAN. We would normally try to keep as close as possible to the normal rules of evidence, but this is an unusual situation, and we will try to chart a proper course as we go along.

DIRECT EXAMINATION

Mr. GOODMAN. Mr. Skelton, please state your name and spell your last name for the record.

Mr. SKELTON. My name is Donald Skelton, S-k-e-l-t-o-n.

Mr. GOODMAN. And you are employed by the Internal Revenue Service, are you not?

Mr. SKELTON. Yes; I am.

Mr. GOODMAN. How long have you been an IRS agent?

Mr. SKELTON. A little over 24 years.

Mr. GOODMAN. And you're with the Criminal Investigation Division?

Mr. SKELTON. Yes; I am.

Mr. GOODMAN. How long have you been with that Division?

Mr. SKELTON. Well, it used to be known as the Intelligence Division. It's now known as the Criminal Investigation Division. I've been with that—it's the same Division—and I've been with it the entire time.

Mr. RODINO. Would the gentleman—Mr. Chairman, may I address the Chair and tell the Chair that the House has another vote and we request a recess at this time.

The CHAIRMAN. Well, I am unhappy to hear that, but it's a reality that——

Mr. RODINO. We don't dictate the time to vote.

The CHAIRMAN [continuing]. We must confront. That brings us to the question of whether you're going to return or whether we——

Mr. RODINO. We're going to return and we believe we can return within the half hour.

The CHAIRMAN. It had been the intention of the Chair to go until about 7 o'clock if we can. So if you can come back at 7—before 6 o'clock, we'll try very hard to hold a quorum here and then continue until 7.

Mr. RONDINO. We will be back before 6.

The CHAIRMAN. Mr. Skelton, you can——

Mr. GOODMAN. May I make one request before the honorable Members of the House adjourn?

In their presence I would like to request the Chair provide to me all the statements which have been prepared by Mr. Skelton which relate to his interviews with Mr. Wright, and all statements prepared by Mr. Skelton which are in the possession of the committee of course which pertain to his interviews, if any, of Mr. Ken Swanson.

The CHAIRMAN. It is my understanding——

Mr. RODINO. Will the Chair permit us to go before the Chair makes any determination as to the——

The CHAIRMAN. Well, let me say very briefly it's my understanding that we have nothing in our possession that has not already been submitted to you. We will make a further search. If anything appears, we will discuss it in open session with the managers present.

Mr. GOODMAN. Thank you.

The CHAIRMAN. We stand in recess, subject to the call of the Chair. Hopefully before 6 o'clock.

[Recess.]

The CHAIRMAN. The committee will come to order.

Mr. Skelton, you were sworn before the recess. You understand that your oath is still binding upon you?

Mr. SKELTON. Yes, sir.

The CHAIRMAN. We will suspend, Mr. Goodman, until several of the members, who are just outside, return.

While we are waiting for the members to return, is it your expectation that the House of Representatives will be in session on Saturday?

Mr. RODINO. No. The House, to my knowledge, will not be in session on Saturday. However, I must remind the chairman that while it may be contemplated there be a Saturday session here, I want to remind the chairman that the members whom I have conferred with, many of them have outstanding obligations already, generally premised on the fact that this trial would proceed through this week, meaning Monday through Friday.

Frankly, I think it would be a matter that I would ask the Chair to consider because of the managers, I'm afraid, will not be able to be here and keep their commitments.

The CHAIRMAN. Of course, it is my hope that we can get started here in just a minute and that we can go a long way tonight, and that we can press along tomorrow. I still am not without some, at least fervent desire that we might complete this thing by the end of the day tomorrow. I would ask the managers on the part of the House, as well as counsel for defense, to bend every effort in that regard.

Is there any objection on the part of any of the parties to meeting as late as possible tomorrow evening, if there is any expectation to finish?

Mr. RODINO. I don't believe there would be, Mr. Chairman. I would note, speaking for some of us—and I'm sure that not all of the Managers need be present—but I would make myself available and so would the others, so would some of the others. So I think if we could go late tomorrow night in order to forgo any further sessions, I think that would be agreeable.

The CHAIRMAN. Well, if we could do that—Mr. Goodman, how do you feel about that?

Mr. GOODMAN. We're ready to abide by the Chair's wishes. We're prepared with our witnesses and there's no reason why we can't work day and night.

The CHAIRMAN. Well, the problem goes beyond the wishes of the Chair. There are practical considerations. The Government Printing Office is already very heavily burdened at this season, the problem of getting the Record printed on a current basis is a serious one. So let's continue to work, with the hope that we can complete the work tomorrow night by the close of——

Mr. RODINO. That's agreeable.

Senator RUDMAN. Mr. Chairman, might it be advisable for the Chair to inquire of counsel on both sides as to how long Mr. Goodman thinks he will be with his remaining witnesses, just to give us some estimate and to give us a feeling of that? Could the Chair put that——

The CHAIRMAN. Perhaps Mr. Goodman could advise us.

Mr. GOODMAN. Yes, I would be happy to, Mr. Chairman.

We have Judge Claiborne's testimony. Of course, that's going to take up the bulk of the time. We have one character witness that we expect to testify tomorrow morning. And then we have the three Federal agents, depending on what their testimony is and what they did, and how hard it's going to be for me to draw it out of them, that will determine how long we're going to be here.

I have had them on the stand before and they don't volunteer anything to me.

The CHAIRMAN. Well, we'll hope for the best and fear the worst. You may proceed, Mr. Goodman.

Mr. GOODMAN. Mr. Chairman, at this time I would move for the exclusion from the proceedings of Special Agent Jesinger of the FBI and Special Agent Halper of the IRS. They will be testifying to areas similar to that of Mr. Skelton, and I would analogize this to the exclusionary rule in the courts, that they should not hear or discuss their testimony with each other.

Mr. **Chabraja.** Mr. Chairman, that is almost preposterous in light of the fact that these proceedings are televised. We have conducted this entire proceeding as an open one. All witnesses have been present for the testimony of others. No one has been excluded.

I understand Mr. Goodman's concern, but I don't think there is anything practical that the Chair can do about it.

The **Chairman.** I don't think it's beyond the realm of the physically possible to sequester these witnesses and to make sure that they were in the room where no television or sound transmissions were being visible or audible. But that has not been the way we have conducted these hearings up to this time. We've had all the witnesses present; they've heard each other testify. I think it's late in the day to alter that rule.

Let me ask the committee if they have any trouble with that ruling of the Chair?

Senator **Rudman.** Which ruling?

The **Chairman.** That the—the denial of the sequestration of witnesses.

Senator **Rudman.** I concur with the ruling.

Senator **Heflin.** I would grant it.

The **Vice Chairman.** Mr. Goodman, exactly what is your request, that they not be present here now?

Mr. **Goodman.** Mr. Vice Chairman, during the testimony of Agent Skelton, I am requesting that they not be privy to his testimony.

The **Chairman.** Mr. Bingaman.

Senator **Bingaman.** I think it's a reasonable request, Mr. Chairman.

Senator **Pressler.** What is it that you fear? Just explain it, for example.

Mr. **Goodman.** The rule is designed so that one witness will not bolster the credibility of another witness, and when they hear each other's testimony, they tend to make it fit.

The **Chairman.** Well, let's put it to the vote of the committee.

Senator **Rudman.** Mr. Chairman, let's understand something. If Mr. Goodman is requesting that the two witnesses other than this gentleman leave the room during this testimony, and he is asked not to watch television, and the same applies to the second and the third, that's one thing. But that's not what sequestration means in terms of witnesses.

Now, if he is asking for that, that's reasonable. But we're certainly not going to sequester these witnesses under U.S. marshal supervision overnight and put them in a hotel room until they're all done testifying, which is what I thought he was asking.

Mr. **Goodman.** No; I did not make myself clear.

The **Vice Chairman.** That's why I put the question.

Mr. **Goodman.** I did not make myself clear. The request is a reasonable request. [Laughter.]

Senator **Warner.** Then we should grant it, Mr. Chairman.

The **Chairman.** Put your request again.

Mr. **Goodman.** My request is that during the testimony of these three witnesses—Mr. Skelton, Mr. Jesinger, and Mr. Halper—that when Mr. Skelton is testifying, Mr. Halper and Mr. Jesinger adjourn themselves to the lobby or some adjacent corridor, outside the purview of television, and wait until they are respectively called. Then when Mr. Skelton removes himself, that he be ordered not to discuss his testimony with the remaining member.

The CHAIRMAN. I sense that that is the temper of the committee. We won't call the roll and we will grant that request, subject to those precise terms.

Mr. GOODMAN. Thank you.

Mr. Skelton, you are employed by the Internal Revenue Service, correct?

Mr. SKELTON. That's correct.

Mr. GOODMAN. And you were a special agent, and then you became a criminal investigator, is that correct?

Mr. SKELTON. Well, it's the same thing.

Mr. GOODMAN. Right. They just changed the name.

Mr. SKELTON. I'm a special agent with the Criminal Investigation Division.

Mr. GOODMAN. How long have you been a special agent?

Mr. SKELTON. A little over 24 years.

Mr. GOODMAN. Are there any procedures that special agents of the IRS follow when they interview a witness regarding an investigation of a taxpayer for alleged crimes?

Mr. SKELTON. They're just interviewed as witnesses——

Senator PRESSLER. I can't quite hear. Can you pull that mike——

Mr. SKELTON. They're just interviewed as witnesses. I mean, we go out and contact them and identify ourselves and ask them questions that we may have.

Mr. GOODMAN. All right. When you go out and interview a witness, either during the interview or after the interview, do you prepare a memorandum of that interview?

Mr. SKELTON. Sometimes, but not always.

Mr. GOODMAN. Do you take rough notes of all interviews which you conduct?

Mr. SKELTON. Sometimes, but not always. Most of the time we do, if it's a major interview or an important interview, sure.

Mr. GOODMAN. Do you keep logs of the interviews which you conduct?

Mr. SKELTON. No.

Mr. GOODMAN. Do you have any time records which would reflect the interviews of any particular witness in an investigation?

Mr. SKELTON. No, sir, I don't think so.

Mr. GOODMAN. You have been sitting here all week, have you not?

Mr. SKELTON. Most of—Yes, sir.

Mr. GOODMAN. And you understand why you have been called as a witness, don't you?

Mr. SKELTON. Yes.

Mr. GOODMAN. It goes to the issue as to your contact with Joseph Wright, and perhaps others, and your participation with them as far as the shaping of their testimony was concerned; you're aware of that, are you not?

Mr. SKELTON. I'm aware that you've said that, yes.

Mr. GOODMAN. Now, how many times have you met with Joseph Wright?

Mr. SKELTON. During what period of time, sir?

Mr. GOODMAN. From the first time you met him until the last time you met him.

Mr. SKELTON. Maybe—I don't know. Ten, fifteen.

Mr. GOODMAN. Well, in anticipation of being called here as a witness today, did you bring with you any memoranda or documentation or rough notes which would be able—which you could use to refresh your recollection?

Mr. SKELTON. No, sir.

Mr. GOODMAN. Did you make any effort whatsoever to look at your file to ascertain the contacts that you had with Mr. Wright?

Mr. SKELTON. No, sir.

Mr. GOODMAN. Did you do that intentionally? By that I mean, did you intentionally fail to look in your file and prepare yourself for your testimony?

Mr. SKELTON. No, sir. I was under the impression that you were going to ask me about alleged harassment of witnesses and the shaping of Mr. Wright's testimony during the trials.

Mr. GOODMAN. Have you brought with you any documentation where you can refresh your recollection as to the first time you met with Joseph Wright?

Mr. SKELTON. No, sir, but the first time I remember meeting him was early in 1983——

Mr. GOODMAN. What date?

Mr. SKELTON. Approximately February.

Mr. GOODMAN. All right. At the time that you met with him, do you know whether or not he had been contacted by any other IRS or FBI agent?

Mr. SKELTON. He had been contacted by the FBI for the service of the subpoena, and I had talked to him on a telephone call from Portland, OR.

Mr. GOODMAN. Do you know when he was first contacted by the FBI?

Mr. SKELTON. No, sir. But it would be some time between October and December of 1983.

Mr. GOODMAN. Do you know who with the FBI contacted him?

Mr. SKELTON. No, sir.

Mr. GOODMAN. Did you see any reports that the FBI composed regarding those contacts with Mr. Wright?

Mr. SKELTON. No, sir.

Mr. GOODMAN. Were you aware that on January 4, 1983, Craig Bitterman of the FBI met with Joseph Wright?

Mr. SKELTON. I know that Mr. Bitterman picked up some documents from Mr. Wright.

Mr. GOODMAN. Do you know at the time that Mr. Bitterman met with Mr. Wright that Mr. Wright advised Mr. Bitterman that certain records may have been misplaced or inadvertently destroyed at his business premises?

Mr. SKELTON. I didn't know that before today.

Mr. GOODMAN. That's the first time you heard that?

Mr. SKELTON. Right—that he advised Mr. Bitterman that?

Mr. GOODMAN. Yes.

Mr. SKELTON. Yes, sir.

Mr. GOODMAN. On February 16, 1983, did you visit with Mr. Wright?

Mr. SKELTON. I did. It was some time in February, yes.

Mr. GOODMAN. Who else was present?

Mr. SKELTON. Special Agent Richard Jesinger and I think Mrs. Wright. And then, of course, there were people in Mr. Wright's office.

Mr. GOODMAN. And as a result of that interview, did you compose a memorandum of interview?

Mr. SKELTON. Yes.

Mr. GOODMAN. Have you had the occasion to see that document?

Mr. SKELTON. Not recently.

Mr. GOODMAN. Was that the first time that you sat down with Mr. Wright?

Mr. SKELTON. That's the—yes, sir.

Mr. GOODMAN. How long did you spend with him then?

Mr. SKELTON. Oh, I would say approximately an hour, an hour-and-a-half.

Mr. GOODMAN. And you asked him questions concerning Judge Claiborne, did you not?

Mr. SKELTON. I asked him questions concerning the preparation of Judge Claiborne's tax returns and recordkeeping procedures.

Mr. GOODMAN. And during that interview, did Mr. Wright advise you that he didn't have a present recollection of what took place with Judge Claiborne?

Mr. SKELTON. Didn't have a present recollection of what took place with him?

Mr. GOODMAN. Yes.

Mr. SKELTON. I mean, he told me about things that he did.

Mr. GOODMAN. Did he remember clearly the information which he was conveying to you?

Mr. SKELTON. Yes. We talked about the procedures that he had established over the years, yes, sir.

Mr. GOODMAN. Did he indicate he had recently had surgery for lung cancer?

Mr. SKELTON. Yes—well, he had told me that previously, too, on the phone.

Mr. GOODMAN. How many telephone conversations did you have with him prior to February 16, 1983?

Mr. SKELTON. I had one in December from Portland——

Mr. GOODMAN. Did you make a notation of that conversation?

Mr. SKELTON. No, sir.

Mr. GOODMAN. Why not?

Mr. SKELTON. There was no need to. I just called to ask him if he had appeared—why he didn't appear in response to a subpoena on that day.

Mr. GOODMAN. OK. And what did he tell you?

Mr. SKELTON. He told me that he was getting records together and that he hadn't had time, and that he had had lung cancer and was not feeling well.

Mr. GOODMAN. When's the next time you spoke with him?

Mr. SKELTON. I don't remember, sir. I'm sure it was to arrange the appointment in February, but I——

Mr. **Goodman**. Was there anything of substance discussed with him during that telephone conversation?

Mr. **Skelton**. No, sir. It was to arrange an appointment.

Mr. **Goodman**. And then you had your meeting with him on February 16?

Mr. **Skelton**. I'm not sure of the date, but it was about then, yes.

Mr. **Goodman**. When is the next time you met with him?

Mr. **Skelton**. I met with him again approximately in March, I think.

Mr. **Goodman**. Of what year?

Mr. **Skelton**. Of 1983.

Mr. **Goodman**. Did you make a memorandum of that meeting?

Mr. **Skelton**. Yes.

Mr. **Goodman**. Where is it?

Mr. **Skelton**. I'm not sure—I don't have it. I mean, it——

Mr. **Goodman**. Where is it?

Mr. **Skelton**. There would be a copy in the FBI office, if I did write one.

Mr. **Goodman**. Well, to whom would you have given it?

Mr. **Skelton**. The memo?

Mr. **Goodman**. A memorandum.

Mr. **Skelton**. Richard Jesinger has a routine copy of all the interviews we ever did.

Mr. **Goodman**. Would that be a handwritten memo or a typed memo?

Mr. **Skelton**. It was a typed memo.

Mr. **Goodman**. For March 1983?

Mr. **Skelton**. Approximately, yes. After I talked to Mr. Watson, some time after that, I talked to Mr. Wright.

Mr. **Goodman**. How long was your conversation with Mr. Wright in March 1983?

Mr. **Skelton**. It was a short one. I'm not sure if it was a meeting or a telephone conversation.

Mr. **Goodman**. All right. When was the next time you met with him?

Mr. **Skelton**. I met with him again in May or June.

Mr. **Goodman**. Would it be May 11, 1983?

Mr. **Skelton**. It was in that period of time, sir.

Mr. **Goodman**. And was that in the presence of any other special agent?

Mr. **Skelton**. I don't think there was anyone with me at that time.

Mr. **Goodman**. And you made a memorandum of that conversation, did you not?

Mr. **Skelton**. I made a memorandum—there was one where I had a meeting with him, yes, discussing some—We were looking for a box of records or something.

Mr. **Goodman**. How long were you with him that day?

Mr. **Skelton**. It wasn't very long. About——

Mr. **Goodman**. When was the next time you met with him?

Mr. **Skelton**. Let's see. I think the next time we met with him was when we taped his deposition.

Mr. **Goodman**. When you taped his deposition?

Mr. **Skelton**. Yes.

Mr. **Goodman**. All right. And when was that?

Mr. **Skelton**. Well, that was later in the summer. I'm not sure about the date on that.

Mr. **Goodman**. How long were you with him then?

Mr. **Skelton**. It was a lengthy one. I think it was a half a day or so.

Mr. **Goodman**. Did you prepare him before his deposition was taped?

Mr. **Skelton**. If showing him documents and telling him what we were going to be questioning him about is preparing him, yes, we prepared him.

Mr. **Goodman**. Did he tell you that he didn't remember some of the areas you were discussing with him?

Mr. **Skelton**. If he did, it's in the deposition.

Mr. **Goodman**. I'm saying, before you took the deposition, didn't you prep him?

Mr. **Skelton**. If showing—I'll repeat what I said, sir. If showing him the documents and telling him that we were going to be asking him about those documents, and the general questions we were going to be asking, is preparing him, then we prepared him.

Mr. **Goodman**. How long did you prepare him?

Mr. **Skelton**. As I remember, it was about 30 minutes or so, not more than that.

Mr. **Goodman**. Did you make a memorandum of that 30-minute interview?

Mr. **Skelton**. No, sir, because we were going to tape the questions that we wanted——

Mr. **Goodman**. And the purpose of the taping was because of his ill health and you wanted to preserve his testimony?

Mr. **Skelton**. It was in lieu of a grand jury appearance, yes.

Mr. **Goodman**. In other words, if he couldn't make it to the grand jury personally, you would have shown the tape to the grand jury?

Mr. **Skelton**. Yes.

Mr. **Goodman**. And, of course, a representative of Judge Claiborne was not present?

Mr. **Skelton**. That's right.

Mr. **Goodman**. No memorandum, though, of the event of that particular day where the deposition took place?

Mr. **Skelton**. There wouldn't be one by me.

Mr. **Goodman**. All right. When is the next time you met with him?

Mr. **Skelton**. The next time we met him was in November.

Mr. **Goodman**. Of what year?

Mr. **Skelton**. 1983.

Mr. **Goodman**. With whom?

Mr. **Skelton**. With whom did we meet him?

Mr. **Goodman**. Yes.

Mr. **Skelton**. Special Agent Leo Halper was there, and Jimmy Walker, or James F. Walker, of the Department of Justice Tax Division.

Mr. **Goodman**. Was there a memorandum of that meeting?

Mr. **Skelton**. Special Agent Halper, I think, prepared an affidavit.

Mr. **Goodman.** All right. Do you know where that is?

Mr. **Skelton.** Yes. There would be a copy of it in the files, and I think you probably were given a copy in the—when he testified.

Mr. **Goodman.** When was the next meeting?

Mr. **Skelton.** The next meeting was around the time that he testified.

Mr. **Goodman.** Which was during the first trial?

Mr. **Skelton.** The first trial.

Mr. **Goodman.** That was around March 29, 1984?

Mr. **Skelton.** Yes.

Mr. **Goodman.** How long did you meet with him before he testified?

Mr. **Skelton.** We met with him several times before he testified.

Mr. **Goodman.** How many hours?

Mr. **Skelton.** I really don't remember. I would say, off and on, probably a day.

Mr. **Goodman.** You're saying just 1 day?

Mr. **Skelton.** Off and on, yes, a total of about 8 to 10 hours.

Mr. **Goodman.** Eight to 10 hours over the course of 1 day?

Mr. **Skelton.** No, over the course—I don't know.

Mr. **Goodman.** Are you telling us it could be 8 to 10 hours over the course——

Mr. **Skelton.** Over a couple of days.

Mr. **Goodman.** Are there any memoranda in the world concerning those interviews?

Mr. **Skelton.** No, sir.

Mr. **Goodman.** Are there any tapes of your interview with Mr. Skelton over those 8 to 10 hours which were utilized for trial preparation during the first trial on March 29, 1984?

Mr. **Skelton.** No, sir.

Mr. **Goodman.** Are there any rough notes in existence anywhere concerning your interviews of Mr. Wright in anticipation of the trial?

Mr. **Skelton.** There may be some rough notes, yes.

Mr. **Goodman.** Where would those be?

Mr. **Skelton.** In the files. But they would not be my rough notes, sir.

Mr. **Goodman.** Did you take any notes during those 8 to 10 hours?

Mr. **Skelton.** No, sir.

Mr. **Goodman.** During those 8 to 10 hours of preparation, did Mr. Wright indicate to you that he didn't have any present recollection of what he was being asked to testify to?

Mr. **Skelton.** Didn't have any present recollection of what he was being asked to testify to?

Mr. **Goodman.** Yes.

Mr. **Skelton.** We went over a lot of stuff and he testified to a lot of stuff. I mean, he remembered a lot of stuff.

Mr. **Goodman.** You heard Mr. Wright testify here before this honorable committee, did you not?

Mr. **Skelton.** Yes, I did.

Mr. **Goodman.** And you heard Mr. Wright say that he didn't have any independent recollection about anything, that he was just testifying as a result of commonsense review of certain documents?

Mr. **Chabraja**. Objection, Mr. Chairman. Mr. Goodman is taking liberal license with the record in these proceedings and misstating the witness 'prior testimony.

The **Chairman**. I think the members of the committee will recall with some clarity Mr. Wright's testimony. I think, Mr. Goodman, that you have put it a little strongly.

Mr. **Goodman**. It was in the "ear of the beholder", Mr. Chairman, but I appreciate it.

The **Chairman**. Perhaps that is the case.

Mr. **Goodman**. So you have no notes whatsoever of the 8 to 10 hours before the first trial?

Mr. **Skelton**. I have none, no, sir.

Mr. **Goodman**. Well, when you say you have none, you make it sound as though there are notes in existence of which you are aware.

Mr. **Skelton**. Another person was taking notes.

Mr. **Goodman**. Who?

Mr. **Skelton**. Mr. William C. Hendricks III.

Mr. **Goodman**. And who is he?

Mr. **Skelton**. He's a trial attorney.

Mr. **Goodman**. He was taking notes of what was taking place, is that correct?

Mr. **Skelton**. Yes.

Mr. **Goodman**. After the first trial—by the way, when you were acting in your capacity as an IRS agent, was that solely the capacity in which you were interviewing Mr. Wright?

Mr. **Skelton**. I was interviewing Mr. Wright, helping Mr. Shaw and Mr. Hendricks.

Mr. **Goodman**. And did you have a title?

Mr. **Skelton**. I was a special agent, yes.

Mr. **Goodman**. Were you assigned to the FBI?

Mr. **Skelton**. No, sir.

Mr. **Goodman**. Were you holding yourself out to the public as an agent of the grand jury?

Mr. **Skelton**. I contacted one witness and, pursuant to the procedures established in the judicial district of Portland, whereby all Government agents are sworn in as grand jury agents, when we contacted one witness, he expressed some concern about turning over documents that he was required to present to the grand jury.

I explained to that witness that we either were—and I'm not sure if I said "were" or "expected" to be sworn in as agents of the grand jury. But I did tell him that, yes, sir.

Mr. **Goodman**. Well, were you acting in the capacity as an agent of the grand jury?

Mr. **Skelton**. It was our understanding that we were agents of the Portland grand jury, based on the requirements of the judicial district of Portland.

Mr. **Goodman**. Did you tell Mr. Wright that?

Mr. **Skelton** [continuing]. The judicial district of Oregon.

No, sir, I did not.

Mr. **Goodman**. After the first trial——

Mr. **Skelton**. There was only one witness I told that.

Mr. **Goodman**. Let me ask you this: How long did the first trial last?

Mr. SKELTON. Oh, about 4 or 5 weeks.

Mr. GOODMAN. And where was it conducted?

Mr. SKELTON. In Reno, NV.

Mr. GOODMAN. Were you in Reno at the time the trial was conducted?

Mr. SKELTON. Yes.

Mr. GOODMAN. Were you in contact with Mr. Wright during the course of the trial?

Mr. SKELTON. During the course of the trial?

Mr. GOODMAN. Yes.

Mr. SKELTON. Yes, we talked to him from time to time prior to his appearance.

Mr. GOODMAN. Is that a part of the 8 to 10 hours we're talking about?

Mr. SKELTON. Yes.

Mr. GOODMAN. That's the only period of time that you spent with him in regard to that trial testimony?

Mr. SKELTON. The only period of time I spent with him?

Mr. GOODMAN. Yes.

Mr. SKELTON. I might have taken him to the airport or something, but—I mean, you know, as far as working on the case, yes.

Mr. GOODMAN. All right. After the first trial, and before the second trial, how much time did you spend with him?

Mr. SKELTON. We spent—If I can correct my testimony, I think on the first trial we talked to Mr. Wright on two different occasions. He was called back twice—I mean he was called back once. He was called as a witness twice, if I remember right.

Mr. GOODMAN. Is that part of the 8 to 10 hours that we're talking about still, or is that an additional——.

Mr. SKELTON. There might be an additional 4 or 5 hours, I'm not sure.

Mr. GOODMAN. Just 4 or 5 there. OK.

And where are your memoranda concerning those interviews?

Mr. SKELTON. Mr. Goodman, I prepared no memorandums regarding either trial.

Mr. GOODMAN. Where are your notes?

Mr. SKELTON. I have none.

Mr. GOODMAN. What is your policy, as a special agent of the IRS, as far as memorializing conversations that you have with witnesses?

Mr. SKELTON. Prior to the trial?

Mr. GOODMAN. At any time.

Mr. SKELTON. Prior to the trial, we don't, as far as I know. I never have made notes.

Mr. GOODMAN. Isn't it a fact, Mr. Skelton, that there is——.

Mr. SKELTON. If a Government attorney is interviewing a witness, he makes the notes.

Mr. GOODMAN. Isn't it a fact, Mr. Skelton, that there is a policy that whenever you speak with a witness that you're supposed to make a memorandum of it, if the witness tells you anything that's pertinent, in order that that witness' testimony may be refreshed at some later time?

Mr. **Skelton**. I think the key word is "pertinent", and I think it's whenever you contact the witness, not when the government attorney is the one doing it and you're there to help.

Mr. **Goodman**. Are you saying, then, during the 8 to 10 hours, and the 4 to 5 hours, Mr. Hendricks was with you at all times?

Mr. **Skelton**. Yes, when we interviewed Mr. Wright.

Mr. **Goodman**. Now, after the first trial, did you meet with Mr. Wright?

Mr. **Skelton**. Yes.

Mr. **Goodman**. Where?

Mr. **Skelton**. For the second trial.

Mr. **Goodman**. All right. How much time did you spend with him?

Mr. **Skelton**. Again, we spent about—I would say about 8 hours, and then again, 8 to 10 hours again, and then again later, about 4 or 5 hours again.

Mr. **Goodman**. Was Mr. Hendricks with you at all times then?

Mr. **Skelton**. No, sir.

Mr. **Goodman**. Who was with you?

Mr. **Skelton**. Steven Shaw was with me part of the time.

Mr. **Goodman**. Did he take notes?

Mr. **Skelton**. Yes, he did.

Mr. **Goodman**. Did you take notes?

Mr. **Skelton**. Not when Mr. Shaw was present. There came a time when Mr. Shaw was not present and I made some notes on a paper he had prepared.

Mr. **Goodman**. And where are those notes?

Mr. **Skelton**. They're in the—we have them in the files.

Mr. **Goodman**. I'm going to show you, Mr. Skelton, with the Chair's permission, a memorandum of interview of February 16, 1983, consisting of two pages; a memorandum of interview dated March 30, consisting of one page; the memorandum of interview of February 16 has three pages. There is a memorandum of interview of May 11 of one page; of March 30, 1983, of one page; and one handwritten document.

I ask you whether or not any of these documents, whether anything exists which would reflect your memorandum of interview with Joseph Wright, other than these, that you prepared?

Mr. **Skelton**. OK. There may be some rough notes—I don't know.

Mr. **Goodman**. Where would those be?

Mr. **Skelton**. I understand they're sealed. The court has them. They're under seal of the court.

Mr. **Goodman**. They would have been provided to Judge Hoffman, is that correct?

Mr. **Skelton**. Yes.

Mr. **Goodman**. And not made available to the defendant or his counsel during the trial, is that right?

Mr. **Skelton**. Not that I know of.

Senator **Rudman**. Would the counsel identify the originator of those memos that the witness has just looked at? I'm sure the panel would like to know who are the originators of those memoranda.

The **Chairman**. Mr. Goodman.

Mr. GOODMAN. Yes. As to the February 16, 1983 memorandum, was this prepared by you, Mr. Skelton?

Mr. SKELTON. Yes, it was.

Mr. GOODMAN. And it bears your signature?

Mr. SKELTON. Let me look at it.

Mr. GOODMAN. May I approach the witness?

The CHAIRMAN. Surely.

Mr. SKELTON. I'm sure it does. It does.

Mr. CHABRAJA. Mr. Chairman, may I interpose the mildest of objections and make a suggestion? I think if Mr. Goodman is going to examine this witness with respect to these memos, they should be marked and made a part of this record.

Mr. GOODMAN. I planned to do that, but I wanted to identify them first, to see whether he is the appropriate witness for it.

Mr. CHABRAJA. I don't think he should be permitted to even examine them until they're marked.

Mr. GOODMAN. I agree with Mr. Chabraja.

The CHAIRMAN. We'll ask him to do that now.

[Whereupon, Claiborne exhibit No. 23 was marked for identification.]

Mr. GOODMAN. I am going to show you what has become exhibit No. 23, Mr. Skelton, and ask you whether or not you were the author of these memoranda of interviews.

Mr. SKELTON. Yes, I am.

Mr. GOODMAN. Are those all of the memoranda which you prepared?

Mr. SKELTON. Regarding Mr. Wright?

Mr. GOODMAN. Regarding Mr. Wright.

Mr. SKELTON. Yes. I don't remember any others.

Mr. GOODMAN. Would you please tell the committee the dates of those memoranda?

Mr. SKELTON. There is one dated February 16, 1983; this one is not involving Mr. Wright.

Mr. GOODMAN. By "this one", you're talking about February 17, 1983; that does not pertain to Mr. Wright?

Mr. SKELTON. Yes. It's Mrs. Wright.

Mr. GOODMAN. All right, go ahead.

Mr. SKELTON. Then there's one March 30, 1983; and there's one May 11, 1983. Then there's—Wait a minute. There's one attached here, Mr. Goodman, that I didn't——.

Mr. GOODMAN. Right. And what is attached to it?

Mr. SKELTON. A memo dated—the investigation date—it's an FBI form 302, or at least it looks like it. I don't see the number on here.

Mr. GOODMAN. How about up here?

Mr. SKELTON. I don't see it.

OK; and it's dated January 4, 1983.

Mr. GOODMAN. And who composed that, according to the 302?

Mr. SKELTON. Mr. Craig R. Bitterman.

Mr. GOODMAN. Of the FBI?

Mr. SKELTON. At that time I think he was with the FBI, but I'm not sure.

Mr. GOODMAN. Now, are there any other memoranda of any other conversations that you had with Mr. Wright that you know of?

Mr. SKELTON. No, sir.

The CHAIRMAN. At that point, Mr. Goodman, let me just go back and review with you the ruling of the Chair under which Mr. Skelton was called. I'm quoting—I dislike quoting myself, but the ruling was that one of our central concerns is preparing a record for the Senate's consideration. The reliability of that record is the basis for the Senate's judgment in this impeachment proceeding. To this end, we are concerned very naturally about any allegation that the testimony of witnesses who have or will appear before us have been influenced by agents of the Government. Without crediting allegations which are before us only on the assertions of counsel, we are prepared to hear the testimony of the Internal Revenue Service Agent Donald Skelton, Federal Bureau of Investigation Agent Richard Jesinger. We have already taken steps to arrange for their appearance.

Now, that's what we're interested in. It's not a discovery proceeding. I want to give you all the latitude that is proper, but we want to keep it within the bounds of that territory.

Were the witnesses subjected to pressure; was their testimony shaped or influenced.

Mr. GOODMAN. The relevance—and I understand the Chair's ruling. But the relevance of this is the number of hours that this witness has spent with Mr. Wright and the dearth of memoranda concerning the hours that he spent with him.

The CHAIRMAN. If we can keep it close to the territory that we've staked out as possible.

Mr. GOODMAN. Now, after the first trial—or after the second trial, some time in late August 1984 and thereafter did you meet with Joseph Wright?

Mr. SKELTON. In late August?

Mr. GOODMAN. After the second trial.

Mr. SKELTON. There was a time after the second trial when I went to Las Vegas and I had lunch with Mr. and Mrs. Wright.

Mr. GOODMAN. Where did the lunch take place?

Mr. SKELTON. There's a restaurant—and I don't know the name of it—in the buildinq there where their office is.

Mr. GOODMAN. Was anybody else present?

Mr. SKELTON. Mr. and Mrs. Wright and me.

Mr. GOODMAN. Did you discuss anything about the case?

Mr. SKELTON. We discussed that we were glad it was over with.

Mr. GOODMAN. Was there any other discussion?

Mr. SKELTON. Not about the details of the case, no, sir.

Mr. GOODMAN. So there was no memorandum of that meeting?

Mr. SKELTON. No.

Mr. GOODMAN. Any diary entry concerning that meeting?

Mr. SKELTON. I wouldn't think so.

Mr. GOODMAN. Did you make any diary entries of any of the meetings which you had with Mr. Wright?

Mr. SKELTON. Not that I recall.

Mr. GOODMAN. In anticipation of Mr. Wright testifying in these proceedings, did you meet with him?

Mr. SKELTON. No, sir.

Mr. GOODMAN. You had no discussions with him whatsoever?

Mr. SKELTON. I had dinner with him one night and his wife, but I did not discuss his testimony or anything.

Mr. GOODMAN. When did you have dinner with him?

Mr. SKELTON. Last Friday night.

Mr. GOODMAN. Where?

Mr. SKELTON. At a place called Phillips Flagship.

Mr. GOODMAN. In what city?

Mr. SKELTON. Here in Washington.

Mr. GOODMAN. How did you know where to meet Mr. Wright?

Mr. SKELTON. He called me up.

Mr. GOODMAN. How did he know where to reach you?

Mr. SKELTON. How did he know where to meet me?

Mr. GOODMAN. Yes, to reach you.

Mr. SKELTON. Oh.

Mr. GOODMAN. If you know.

Mr. SKELTON. Yes. I received a call from Mr. David DeBruin stating that Mr. Wright wanted to talk to me.

Mr. GOODMAN. Mr. DeBruin is one of the associate counsels for the House; is that right?

Mr. SKELTON. He is. That's my understanding.

Mr. GOODMAN. And he indicated that Mr. Wright wanted to speak with you?

Mr. SKELTON. Yes.

Mr. GOODMAN. Did you have a friendly relationship with Mr. Wright?

Mr. SKELTON. At dinner?

Mr. GOODMAN. No, generally, from the time that you met.

Mr. SKELTON. Oh, yeah. I have long since learned, Mr. Goodman, that you don't get anywhere by antagonizing people.

Mr. GOODMAN. All right. And you tried to befriend him, correct?

Mr. SKELTON. Not tried to befriend him. I tried to be friendly with him.

Mr. GOODMAN. OK. And did you try to gain his confidence?

Mr. SKELTON. I tried to treat him professionally, sir. I didn't try to gain his confidence.

Mr. GOODMAN. Did you want him to believe you?

Mr. SKELTON. That was up to him to decide. That's not——

Mr. GOODMAN. Were you making an effort, though, that you wanted him to have confidence in you?

Mr. SKELTON. I wanted to treat him professionally, and I would assume he would treat me professionally.

Mr. GOODMAN. At any time in, let's say—would it be a fair statement that you met with him about 50 hours, all told?

Mr. SKELTON. Met with him 50 hours all told?

Mr. GOODMAN. Before he testified here this week.

Mr. SKELTON. I would say 40, somewhere in there. You know, I don't——

Mr. GOODMAN. Forty hours.

Mr. SKELTON. Just an estimate.

I mean, most of the time was spent at the trial and trial preparation, and the deposition.

Mr. GOODMAN. But most of the time was spent in talking about the case, in other words?

Mr. SKELTON. Yes——

Mr. **Goodman**. Talking about his testimony.

Mr. **Skelton**. Well, I wasn't the only one there. I mean——

Mr. **Goodman**. When you were there, wasn't the time spent in preparing him for his testimony?

Mr. **Skelton**. It was reviewing documents, the chronology of the documents, and giving him general areas that we expected to talk to him about.

Mr. **Goodman**. Did Mr. Wright, during this 40-hour period that you were with him, ever say to you that he did not have an independent recollection of any of the matters which he was expected to testify to at the trial level?

Mr. **Skelton**. I don't think there was any doubt that Mr. Wright——

Mr. **Goodman**. Would you please answer my question. Did he ever say to you, "Mr. Skelton, I don't have an independent recollection of these questions that you're asking me; I just can't remember"?

Mr. **Skelton**. What he did say, Mr. Goodman, was that he would have to rely on his documents and refresh his memory, and that he knows his procedures—his knowledge of his procedures were better than his present recollection of any of that.

Mr. **Goodman**. Did he ever say to you that he had no recollection, independent recollection, of anything that took place with Judge Claiborne? Did he ever say that to you during these 40 hours you met with him?

Mr. **Skelton**. Well, he said that he had no recollection—his recollection was not as good as his reliance upon his documents.

Mr. **Goodman**. But——

The **Chairman**. At that point, Mr. Goodman, I think we have to interrupt you. The House is being called to another vote.

Mr. **Rodino**. Mr. Chairman, is it the intention of the committee to go beyond 7 o'clock?

The **Chairman**. No. It was our hope to get to 7 o'clock.

Mr. **Rodino**. Then if we leave now, Mr. Chairman, it's hardly worth coming back.

The **Chairman**. That's right. I'm afraid, if you leave now, the show's over. But we will meet again. We have a rendezvous at 9:30 tomorrow morning—not 9 o'clock, but 9:30. Sorry, Mr. Goodman, but that's beyond our power.

[Whereupon, the committee adjourned at 6:46 p.m.]

SENATE IMPEACHMENT TRIAL COMMITTEE

(Appointed Upon the Adoption of Senate Resolution 481, 99th Congress 2d Session, Pursuant to Rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials)

FRIDAY, SEPTEMBER 19, 1986

U.S. SENATE,
SENATE IMPEACHMENT TRIAL COMMITTEE,
Washington DC.

The committee met, pursuant to notice, at 9:45 a.m., in room SR-325, Russell Senate Office Building, Hon. Charles McC. Mathias, Jr. (chairman) presiding.

Present: Senators Mathias, Sarbanes, Bingaman, Gore, Pryor, DeConcini, Heflin, Warner, Rudman, Pressler, Hatch, and McConnell.

Managers and counsel from the House of Representatives present: Peter W. Rodino, Jr., Robert W. Kastenmeier, William J. Hughes, Roman L. Mazzoli, Dan Glickman, Hamilton Fish, Jr., Henry J. Hyde, Michael DeWine; Nicholas D. Chabraja, special counsel, and David DeBruin, associate special counsel.

House Judiciary Committee staff present: M. Elaine Mielke, general counsel; Alan F. Coffey, Jr., associate general counsel; Judith Bailey, counsel; Daniel M. Freeman, counsel; Gary Goldberger, counsel; Warren S. Grimes, counsel; Joseph V. Wolfe, counsel, and Jonathan R. Yarowsky, counsel.

Respondent and counsel present: The Honorable Harry E. Claiborne, respondent; Oscar Goodman, counsel; Senator Howard Cannon, counsel; Michael V. Stuhff, associate counsel; and David Z. Chesnoff, associate counsel.

Staff present: Michael Davidson, counsel; Floyd M. Riddick, consultant; John B. Childers, staff director; John F. Rixey, Jr., deputy staff director; Anthony L. Harvey, clerk; Byron F. Hoover, assistant clerk; Gerald B. Gereau, security coordinator; Ann Pincus, press liaison; and Randy Dove, press liaison.

The CHAIRMAN. The committee will come to order.

At the conclusion of yesterday's session, you will recall that we again had occasion to discuss memoranda contained in materials transmitted to the committee by the U.S. District Court for the District of Nevada. The court had provided in an order dated September 12, 1986 the transmittal not only of the original exhibits in evidence, but also of any sealed exhibits.

I might say parenthetically that the committee or the Senate, generally, had never asked the court for any of the sealed exhibits.

On Monday, counsel for Judge Claiborne requested that the committee examine these materials to determine whether they contained exculpatory material. This was a discussion which took place at the end of the initial examination of Joseph Wright, and counsel particularly requested memoranda of Government interviews of Mr. Wright who remained under subpoena.

Pursuant to that request, our counsel and our staff director reviewed the sealed papers, except for the material designated as grand jury material, and identified a total of four memoranda of interviews with Joseph Wright by Government agents and one memoranda of interview of Mrs. Wright.

The Department of Justice was asked whether it had any views for the committee's consideration about release of these memoranda to parties to this proceeding. The Department responded that it had no objection, and therefore yesterday the memoranda were provided to the parties.

Now, it turned out that the parties already had three of the four memoranda. Counsel for Judge Claiborne then recalled Mr. Wright as a witness yesterday and examined him about the previously undisclosed memorandum. Late yesterday, our counsel and staff director once again reviewed the sealed, nongrand jury material after counsel for Judge Claiborne asked whether the material contains a memorandum of an interview of Kenneth Swanson. Their review confirmed that the materials do not contain any such memorandum.

Moreover, beyond the memoranda of interviews of the Wrights, the material contains a memorandum of only one other person who has or at least is expected to testify as a witness before this committee. This additional memorandum is of an interview with Judge Claiborne's witness Clyde Maxwell about a subject other than Judge Claiborne's 1979 and 1980 tax returns.

Now, undoubtedly this is of no surprise to the parties or to anyone else. The Government also submitted to the district court the rough notes of agents used in preparing their interview memoranda.

The sealed material contains photocopies of the rough notes of the previously disclosed interviews of Joseph Wright. Our counsel and staff director did not find rough notes for the short memorandum of the additional interview of Mr. Wright which was disclosed for the first time yesterday.

I would like the parties to be aware that there are rough notes of two additional interviews for which there are no completed memoranda in the sealed exhibits which have been inspected. These are photocopies of rough notes of an interview with Jerry Watson dated March 8, 1983, conducted by FBI agent Richard Jesinger, and a photocopy of notes of an undated interview of Charlotte Travaglia.

Counsel for the parties should advise us whether they would like the committee to consider some form of access to these rough notes. Before doing so, counsel should confer, and I would suggest that you do this at some break in the proceedings, to determine what finished memoranda either may have in the interviews of these witnesses, and should also confer with counsel for the Department of Justice in an effort to resolve, with a minimum amount of friction, any questions about these two interviews.

Now, I do not think that I have to ask parties to keep their eye on the larger task before us. The major elements of this whole picture, the questions that have to be resolved, have been described to the committee.

It is, of course, enormously important to hear from Judge Claiborne on these questions, and I think that we will all serve our various responsibilities best if we can move as expeditiously as possible so that we can turn to that critical phase of the proceedings.

Mr. Skelton, will you return to the witness stand? Mr. Skelton, I am sure I do not have to remind you that you are under oath, the testimony you will give will be under oath, and you are bound by the oath you took yesterday.

Mr. **Skelton**. Yes, sir. Thank you.

The **Chairman**. Mr. Goodman.

Mr. **Goodman**. Thank you. Good morning.

DIRECT EXAMINATION—RESUMED

Mr. **Goodman**. Mr Skelton, yesterday you were shown some memoranda which you identified. I believe it is exhibit No 23. You indicated that your signature appeared thereon; is that correct?

Mr. **Skelton**. On some of the documents, at least, I think, yes.

Mr. **Goodman**. All right. At this time I would move the admission of exhibit No 23.

Mr. **Skelton**. My signature is not on the last one, sir. It is signed by Mr. Craig Bitterman.

Mr. **Goodman**. With the exception of the Bitterman 302, you are responsible for the preparation of these other documents, are you not?

Mr. **Skelton**. Yes, I prepared them.

Mr. **Goodman**. You had the Bitterman document within your possession, however?

Mr. **Skelton**. Pardon me?

Mr. **Goodman**. You had the Bitterman document within your possession?

Mr. **Skelton**. I did?

Mr. **Goodman**. Yes.

Mr. **Skelton**. No, sir.

Mr. **Goodman**. You have seen it?

Mr. **Skelton**. I have seen it.

Mr. **Goodman**. You have relied on it?

Mr. **Skelton**. Yesterday I saw it.

Mr. **Goodman**. For the first time?

Mr. **Skelton**. That is the first time I remember seeing it.

Mr. **Goodman**. At this time I would move for the introduction of exhibit No 23.

The **Chairman**. Mr. Chabraja?

Mr. **Chabraja**. No objection, Mr. Chairman, including the Bitterman memo.

The **Chairman**. Thank you. Exhibit No. 23 will be accepted.

[Whereupon Claiborne exhibit No. 23 was received in evidence.]

Mr. GOODMAN. Now, Mr. Skelton, I would like to ask you whether or not—may I approach the witness, Mr. Chairman?

The CHAIRMAN. Certainly.

Mr. GOODMAN. You have seen exhibit No 36?

Mr. SKELTON. Yes, I have.

Mr. GOODMAN. When is the first time you saw it?

Mr. SKELTON. November 1983.

Mr. GOODMAN. How do you know that?

Mr. SKELTON. I just remember seeing it at that time.

Mr. GOODMAN. Did you make a notation in the upper right-hand corner of it?

Mr. SKELTON. No, sir, I did not.

Mr. GOODMAN. Do you know who did that?

Mr. SKELTON. I am not sure. That looked like Mr. Hendricks's writing to me.

Mr. GOODMAN. Where did you see it?

Mr. SKELTON. Where did I see it?

Mr. GOODMAN. Yes, exhibit No. 36 for the first time.

Mr. SKELTON. Where did I see exhibit No 36?

Mr. GOODMAN. Yes.

Mr. SKELTON. I saw exhibit No. 36, with the exclusion of that information, for the first time in November 1983.

Mr. GOODMAN. Where?

Mr. SKELTON. Where? In Las Vegas. I am not sure where. It may have been in Mr. Wright's office, or I might have met with Mr. Walker somewhere in Las Vegas previous to that.

Mr. GOODMAN. When you read exhibit No. 36, did that cause you to have any questions in your mind about the 1979 tax return which is at issue here?

Mr. SKELTON. About the tax return?

Mr. GOODMAN. Yes.

Mr. SKELTON. Yes, it did

Mr. GOODMAN. And what did you do? What was the first thing you did after you saw exhibit No. 36 regarding speaking to Mr. Wright?

Mr. SKELTON. I was contacted by Mr. Walker, and I made an appointment to see Mr. Wright.

Mr. GOODMAN. Did you ask him about exhibit No. 36?

Mr. SKELTON. I cannot remember if I did or who did, but there was more than one of us there.

Mr. GOODMAN. All right. How long did you spend with him on that occasion?

Mr. SKELTON. An hour, hour and a half. I do not remember for sure.

Mr. GOODMAN. Where is your memorandum which memorializes that event?

Mr. SKELTON. I did not write a memorandum, sir.

Mr. GOODMAN. Did you make any rough notes regarding that event?

Mr. SKELTON. Not that I recall.

Mr. GOODMAN. Did you speak to Mr. Wright after that first meeting about exhibit No. 36, the letter of April 11, 1980?

Mr. SKELTON. Did I speak to him about that exhibit?

Mr. GOODMAN. Yes.

Mr. SKELTON. Yes, I did Well, I do not know if I did or if Mr. Hendricks did.

Mr. GOODMAN. You were present?

Mr. SKELTON. I was present, sure.

Mr. GOODMAN. Did you make any notes whatsoever about any of your discussions with Mr. Wright concerning the April 11, 1980, letter?

Mr. SKELTON. Not that I recall, sir

Mr. GOODMAN. No notes, no memorandum?

Mr. SKELTON. None that I recall, sir.

Mr. GOODMAN. All right. And your testimony under oath as you sit there today is that you do not believe that your manual, your rules, your regulations require you to make notes of interviews with your witnesses?

Mr. SKELTON. Mr. Goodman, I think I explained yesterday that on that occasion when we talked to Mr. Wright, with Mr. Walker and Mr. Halper there, there was an affidavit prepared.

Mr. GOODMAN. You talked to Mr. Wright many, many times about the April 11, 1980, incident, did you not?

Mr. SKELTON. And the other times that I talked to him about that were—not about the incident. I talked to him about the letter.

Mr. GOODMAN. When did you first speak to Ken Swanson?

Mr. SKELTON. Approximately March.

Mr. GOODMAN. Of what year?

Mr. SKELTON. 1983.

Mr. GOODMAN. And did Mr. Swanson tell you that the judge's secretary, at least he was advised that the judge's secretary delivered something to Mr. Wright's office on April 11, 1980?

Mr. SKELTON. Absolutely not.

Mr. GOODMAN. So you are denying that that statement was ever made to you?

Mr. SKELTON. Yes.

Mr. GOODMAN. And do you know whether or not any other Federal agency was told by Mr. Swanson that the judge's secretary went to Mr. Wright's office on April 11, 1980?

Mr. SKELTON. Not that I know of.

Mr. GOODMAN. The first time you heard about that was in this courtroom? Pardon me, these chambers.

Mr. SKELTON. Yes, sir. About what Mr. Swanson had to say?

Mr. GOODMAN. Yes.

Mr. SKELTON. Yes, sir. That is the first time I have heard that.

Mr. GOODMAN. All right. Did you ever question Mr. Wright about any break-ins?

Mr. SKELTON. I do not recall that being discussed at all.

Mr. GOODMAN. After you left these proceedings last night, did you speak to anybody about your testimony?

Mr. SKELTON. No, sir.

Mr. GOODMAN. Are you able to guide us to any type of document whatsoever that you are aware of which would reflect what Mr. Wright said about the events of April 11, 1980?

Mr. SKELTON. Well, I think I previously referred to an affidavit.

Mr. GOODMAN. That is the only document?

Mr. SKELTON. There may be some notes which were prepared by Mr Hendricks, Mr Shaw, and I might have made some notes. I do not recall doing it, but I might have made some notes on Mr. Shaw's notes when we were preparing for the trial.

Mr. GOODMAN. Did you ever ask Mr. Wright to explain how the $8,000 check, which is exhibit No. 3 in the respondent's file, got to the IRS?

Mr. SKELTON. How it got to the IRS?

Mr. GOODMAN. Yes.

Mr. SKELTON. I do not recall the discussion.

Mr. GOODMAN. Did you ever ask him about it?

Mr. SKELTON. I do not recall.

Mr. GOODMAN. If you had notes, of course, you could refresh your recollection, correct?

Mr. SKELTON. Yes.

Mr. GOODMAN. Now, when you were speaking to Mr. Wright, was it your objective to gather information from him to lead to an indictment?

Mr. SKELTON. To lead to an indictment?

Mr. GOODMAN. Yes.

Mr. SKELTON. It was our objective to gather information from him.

Mr. GOODMAN. Was the purpose to gather information to lead to an indictment?

Mr. Skelton Just to gather information from him. I do not know that it was to lead to an indictment.

Mr. GOODMAN. Well, you are a criminal investigator, correct?

Mr. SKELTON. That is correct.

Mr. GOODMAN. And your investigation is to try to prove crimes, is it not?

Mr. SKELTON. Prove or disprove I mean, we do not try to prove. We try to find the information.

Mr. GOODMAN. Well, would it not be a fair statement that in the 40 hours that you worked with Mr. Wright it was to prepare his testimony so that it could be used against Judge Claiborne?

Mr. SKELTON. Mr. Goodman, the 40 hours includes time after the indictment. Let us clarify that. It includes time after the indictment——

Mr. GOODMAN. I have no problem with that. Is it not a fact that the 40 hours you spent with him was preparing him to testify against Judge Claiborne, either in front of a grand jury, in front of the first trial, in front of the second. trial; is that not correct?

Mr. SKELTON. Yes, basically.

Mr. GOODMAN. In order to——

Mr. SKELTON. Not necessarily before—no, not—the first few contacts were to gather information, sir.

Mr. GOODMAN. That is correct, and you got the information.

Mr. SKELTON. Yes.

Mr. GOODMAN. You reviewed it, correct?

Mr. SKELTON. Yes; I did.

Mr. GOODMAN. And you serialized it or put it in a chronological order, correct?

Mr. SKELTON. Yes.

Mr. GOODMAN. And you went back to Mr. Wright, and Mr. Wright says, geez, I do not have any independent recollection about any of these situations, and the two of you went through all this documentation, and you reconstructed with Mr. Wright what you thought happened; is that not correct?

Mr. SKELTON. That is not correct, sir.

Mr. GOODMAN. Are you saying that Mr. Wright had an independent recollection about anything?

Mr. SKELTON. He did about some things, certainly.

Mr. GOODMAN. Very few things, is that not accurate?

Mr. SKELTON. Well, I think I said yesterday, and I will tell you again today, that what he did say, and it certainly is logical to me, is the documents reflected what happened and he used those to refresh his memory.

Mr. GOODMAN. Because he had no present memory?

Mr. SKELTON. He needed to refresh his memory, surely.

Mr. GOODMAN. And you helped him do that, did you not?

Mr. SKELTON. I looked at some of the documents, and we went through them together, as—you know, I was not the only one. Mr. Shaw, Mr. Hendricks——

Mr. GOODMAN. Everybody was doing it with him?

Mr. SKELTON. We all looked at the documents, that is correct.

Mr. GOODMAN. Right. And you were all working with him and helping him prepare so he would testify, correct?

Mr. SKELTON. I would not say we were helping him. That is your characterization. We were reviewing it with him, yes.

Mr. GOODMAN. Would it be a fair statement that after he testified in front of the grand jury that you sat down with him in anticipation of his testifying at the first trial and said, "This is what you said to the grand jury, Mr. Wright. Now, you want to be consistent so you had better read it and then testify in accordance with what you said truthfully before the grand jury"; right?

Mr. SKELTON. I think that is completely distorted, sir. We showed him his grand jury testimony. We showed him the documents. We generally told him what we were going to be asking him about.

Mr. GOODMAN. All right. And you told him to read it.

Mr. SKELTON. We asked him and practically every witness that we talked to to read what they had said before. I do not think there is—I mean, that is just trial preparation, Mr. Goodman. I am sure that you probably did the same thing.

Mr. GOODMAN. Let me ask you this, Mr. Skelton: How long did you spend with Mr. Wright? How many hours did you spend with Mr. Wright before he testified to the grand jury?

Mr. SKELTON. Not very many. An hour, hour and a half, I guess. He did not testify before the grand jury. It was on the deposition. I went over some documents with him.

Mr. GOODMAN. Just for an hour, hour-and-a-half?

Mr. SKELTON. Well, I really do not remember. I mean, it was—you know, there were some documents, and he had copies of them. There were a few critical documents that we reviewed, sure.

Mr. GOODMAN. For an hour and a half?

Mr. SKELTON. I do not know how long. I am approximating. I mean, I am not sure.

Mr. GOODMAN. May I have the Chair's indulgence, please?

The CHAIRMAN. Yes, certainly.

[Pause].

Mr. **Goodman**. Mr. Skelton, did you have with you at the time you were speaking to Mr. Wright the notes which were prepared by Mr. Hendricks?

Mr. **Skelton**. At which time, sir?

Mr. **Goodman**. At any time that you were speaking to Mr. Wright in anticipation of his testifying, did you have with you the notes which were taken by Mr. Hendricks of the Public Integrity Section?

Mr. **Skelton**. No, sir.

Mr. **Goodman**. At any time you were speaking with Mr. Wright, did you have with you the notes which were prepared by Steven Shaw of the Public Integrity Section?

Mr. **Skelton**. Yes.

Mr. **Goodman**. And did you show Mr. Shaw's notes to Mr. Wright?

Mr. **Skelton**. No, sir.

Mr. **Goodman**. Did you utilize Mr. Shaw's notes in order to refresh Mr. Wright's recollection?

Mr. **Skelton**. No, sir.

Mr. **Goodman**. Did you in any way utilize Mr. Shaw's notes in discussing the testimony of Mr Wright with him?

Mr. **Skelton**. Yes. I went over it and told him generally what areas Mr. Shaw would be asking him about.

Mr. **Goodman**. And you referenced the notes at that time, did you not?

Mr. **Skelton**. I might have made some on that. I am not sure.

Mr. **Goodman**. All right. Now——

Mr. **Skelton**. Made some notes of my own on Mr. Shaw's notes, for Mr. Shaw's knowledge.

Mr. **Goodman**. Say that again?

Mr. **Skelton**. I might have made some notes on Mr. Shaw's notes, for Mr. Shaw's knowledge when he questioned Mr. Wright.

Mr. **Goodman**. But at the time that you were questioning Mr. Wright, you utilized Mr. Shaw's notes, did you not?

Mr. **Skelton**. I was not questioning him, sir. At the time I was——

Mr. **Goodman**. You were working with him?

Mr. **Skelton**. At the time I was——

Mr. **Goodman**. Preparing him.

Mr. **Skelton**. Not preparing him. At the time we were reviewing what had happened and what was going to happen.

Mr. **Goodman**. Well, is it not fair to say that you were preparing him for what was about to happen?

Mr. **Skelton**. Well, preparing—going over the questions that we had, the documents we were going to show him and so on, if that is preparing him, then I was preparing him.

Mr. **Goodman**. All right. Fine. Nothing further.

The **Chairman**. Do the managers wish to cross-examine?

CROSS-EXAMINATION

Mr. **Chabraja**. Mr. Skelton, in your meetings with Joseph Wright during the course of your investigation, during the time before he testified on deposition and during the time you were with him before each of the trials, did you in any way encourage him to testify in any way that was not consistent with his own memory and refreshed recollection?

Mr. SKELTON. No, sir, and I do not think he would have welcomed any suggestion to the contrary.

Mr. CHABRAJA. Would you please tell the Members of the Senate as directly and straightforward as you can whether you ever in any respect suggested to Mr. Wright that he be less than candid and truthful with any factfinding body?

Mr. SKELTON. No, sir.

Mr. CHABRAJA. No further questions, Mr. Mathias.

The CHAIRMAN. Senator Pressler.

Senator PRESSLER. Mr. Chairman.

I want to understand, if you could explain to me, how it works in the IRS, how did the original audit of Judge Claiborne's tax return, how did that get triggered?

Mr. SKELTON. It was not an audit, sir. It was a grand jury investigation, and it was triggered as a result of a request from the Department of Justice that the IRS look at some information it had obtained and make a determination as to whether or not they would be willing to commit the resources to participate in the grand jury investigation.

The CHAIRMAN. The Chair would like to just interrupt for a moment, Senator Pressler, if I may, because I think it is a critical question.

Mr. Skelton is here for a very limited purpose. We have limited Mr. Goodman in his examination of Mr. Skelton. The managers of the House have restrained themselves on it, and I think the committee has got to be cautious. We are here now to talk about how Mr. Skelton or his associates may have, might have, possibly could have shaped or influenced the testimony of the witnesses.

If we get into questioning beyond that subject, I think we are beyond the ruling of the Chair, and we will have to reconsider that. So if members can restrict their questions just to whether or not there was any influencing and shaping of testimony.

Senator PRESSLER. Mr. Chairman, the purpose of my question is to try to determine if the IRS or the Government was motivated in any way, if this started with the IRS. We always hear stories that the IRS, sometimes through an audit or something, decides it is going after somebody. But that does not seem to be the case here. But I think that leads, in my mind, very much leads to whether or not they would coach a witness.

The CHAIRMAN. Well, with the greatest respect, I would have to say that I think we would have to alter the ruling of the Chair if we are going to get into those matters, because we have called Mr. Skelton to see if in some way there were activities by the Government, on the part of the Government, that affected the credibility of witnesses.

Now, if we get into the targeting question, something of that sort, that is a different area that we have not yet determined we are going into.

Now, the committee can very well determine it wants to go into it, but at this point we have not reached that.

Senator HEFLIN. Mr. Chairman, I might mention, I have a series of questions, a few, which could fall in the same category, and I might as well mention it since you are ruling right now on this.

I am interested in ascertaining from this witness, since he is a special agent and, as I understand it, a special agent deals with the issue of fraud and criminal activity. The lines of demarcation between sanctions that the Internal Revenue takes when they see that there is either willfulness, fraud, or negligence involved in it, I wanted to pursue whether or not what the standards, what guidelines the Internal Revenue Service has and what this gentleman, as a special agent, would have and how he would apply it, as to the distinction between a civil fraud penalty and a criminal action, and the distinction between a negligence penalty and a fraud penalty, and what factors enter into those determinations.

I say that I think that it would be helpful to the committee to have this information. Now, in its relationship to how it might influence witnesses, the rationale that was used pertaining to the criminal prosecution as opposed to a civil fraud penalty or toward an imposition of a negligence penalty might well reveal some attitude which could be helpful in determining whether or not there was any effort made to try to influence witnesses to make statements or give testimony of a certain import.

Senator WARNER. Mr. Chairman, I join Senators Heflin and Pressler on this. I think it is essential that we explore the procedures by which this return was treated in one way in contrast to how other returns are treated.

Senator PRESSLER. Mr. Chairman, may I just add, since I have been overruled here, that Senator Heflin said it much better than I. I want to know what this man's job was, why he would have been motivated to prepare a witness a certain way. As a member of the committee, I want to get a feel for that, and I just have a line of questions that if I do not ask them, I am not doing my job.

The CHAIRMAN. Senator DeConcini.

Senator DECONCINI. I would just like to express the view that I appreciate my colleagues from Alabama and South Dakota wanting to know this information. Quite frankly, I would like to know it, too.

But in my judgment, constricting and carefully defining how far we go here is very important. It does not seem to me to go to the relevance of the articles that are before us for consideration, unless you look at it in a very broad term that we want to retry everything and every issue and every allegation and defense that is put forward by the prosecutors in the original cases, one and two, and by the defense here.

I do not want to cut off anybody. The Senators from Virginia and Alabama certainly have the right to do it, but I concern myself about just how far we are going to be going if we get into all this.

The CHAIRMAN. The Chair would observe that it finds itself in a difficult position because I certainly do not like to inhibit the range of questions of any member of the committee. But I would just review for you or recall to your memory the ruling that was adopted by the committee: That one of our central concerns in preparing a record for the Senate's consideration is the reliability of that record as the basis for the Senate's judgment in this impeachment proceeding. To this end, we are concerned, very naturally, about any allegation that the testimony of witnesses who have or will appear before us has been influenced by agents of the Government, without crediting allegations which are before us only on the assertions of counsel. We are prepared to hear the testimony of Internal Revenue Agent Donald Skelton and Federal Bureau of Investigation Agent Richard Jesinger.

Now, that is where we started out. That is the position of the committee. Now, that is subject to being changed, and I have no personal feelings.

Senator HATCH. Would the Senator yield?

The CHAIRMAN. Yes.

Senator HATCH. It seems to me that counsel has been restricted with regard to these matters, and they have obeyed and lived within those restrictions. But it also seems to me that those of us sitting here as a committee may have a further interest in this, as Senator Heflin, Senator Warner, and Senator Pressler have indicated.

For instance, we have pretty well avoided all the Conforte allegations and so forth, but let us just use that as an illustration. If Conforte, if the zeal of the Government in trying to convict Judge Claiborne was overzealous to the extent that they made deals and worked with witnesses in a way that may have been untoward or may have been prejudicial or may have been improperly influential or any other set of terms you would care to use, then it seems to me all of these areas are at least fair game for members of this committee, especially since they may go to improper influence by Government agents with regard to the indictments and the case against Judge Claiborne. So they do go to that very issue within the parameters of what we did agree to, although I have to admit that they go further than what I think the chairman has expressed in private meetings.

The CHAIRMAN. The Vice Chairman.

The VICE CHAIRMAN. Mr. Chairman, I would suggest that we continue according to the prior rulings of the Chair in considering the case. The committee will then have the opportunity, having concluded that approach, to review again whether it wishes to move off into other areas. We did not foreclose that in the——

Senator HATCH. We have him here now. Why not, rather than having a discussion, why do we not just do it?

The VICE CHAIRMAN. Well, because it seems to me we should develop the case as we have defined it and lay that out for the committee. That is the path down which we proceed, and I think we ought to fully develop that path in a sequential testimony; and then, having done that, if we then wish to move off on to other paths, we could come back and undertake to do that.

Senator PRYOR. Mr. Chairman.

The CHAIRMAN. Senator Pryor.

Senator PRYOR. I would just like to say, Mr. Chairman, that none of us asked for this job; none of us sought this particular assignment to this committee. But being that we are assembled and being that we do have a tremendous challenge, we also have an opportunity, I think, a rare one. And that opportunity is, maybe for the first time, to find out how our own Government works in a situation like this. And in finding that, I think we go to the depth of the defendant's defense. And even if we have to meet on Saturday or Sunday or whatever, I think that this is key testimony. I hope that we can, at least in this area, expand it because we may never be afforded this opportunity again. And I think it is critical to the respondent's position that we explore this further.

The CHAIRMAN. The Chair is sensitive to the opinions that have been expressed by the committee. We have to move, however, in an orderly way.

Mr. Skelton is not going to go anywhere; in fact, I will direct that he stay here. I would like to keep this portion of the testimony within the agreed boundaries and limits.

At the first break, the committee can discuss in some depth how far we want to go on this. I am sure Mr. Goodman would have no objection if we expanded the boundaries.

Mr. GOODMAN. I stipulate to that, Mr. Chairman.

The CHAIRMAN. That is the first stipulation you have made in this whole proceeding.

Senator RUDMAN. When the Chair is finished?

The CHAIRMAN. Yes.

Senator RUDMAN. When the chairman is finished, I just want to make——

The CHAIRMAN. Well, when I am finished, it is going to be the end, so you had better say what you have to say now.

Senator RUDMAN. Thank you, Mr. Chairman. I appreciate that warning.

I want to make just one observation here publicly before the committee, and we will discuss it ourselves afterward. We have made a ruling which essentially limited counsel's ability to go beyond the scope of conduct unless that conduct in some way shaped testimony and would affect its reliability before the U.S. Senate.

Now, I understand and share the concern of my colleagues about some of the background here which, I think in a larger sense, is a matter for the entire Senate, the appropriate committees of the House and the Senate. We have the chairman of the House Judiciary Committee who is sitting here as the ranking member of the managers' panel. And that is a very important issue, and it probably ought to get looked into.

I want to caution the panel that it seems to me, from my own background and experience, that if in fact the Senate panel chooses not to be bound by the ruling we have previously adopted as to what the scope will be, then there is no way that we can limit Mr. Goodman or Chairman Rodino or anyone concerned on the prosecution or defense of this issue from opening this up fully. I do not think this panel has the luxury of opening the door that far, and I am indicating about an inch. I think the panel, if it opens it an inch, opens it as wide as anybody wishes to open it, and that will change the whole scope of these hearings.

I want to just say, Mr. Chairman, that at the conclusion of this I have intended to write a letter to the chairman of this committee, the House Judiciary Committee, and the Senate Judiciary Committee, as a Member of the U.S. Senate making a series of recommendations as to things that I think ought to be looked into when the 100th Congress convenes

I do not think we ought to do what is being suggested here, because if we do, then in fairness to Mr. Goodman and to Mr. Chabraja, there is no question but that we must open this up fully. We cannot have the luxury, Mr. Chairman, of asking our questions and not allowing counsel for the respondent here or counsel for the managers not to open it up themselves. So we had better be very, very careful as to what we do here.

The **Chairman**. I thank the Senator from New Hampshire. Before I call on Senator Hatch, let me remind you that the rules provide that in impeachment proceedings, debate among Senators shall be in closed session.

Now, we are discussing this question of whether or not we should ask certain questions of the witnesses, and I have allowed a maximum latitude in that. But we do have rules by which we have to live, and I think we are reaching a point where we are close to debate among ourselves on a very critical turning point in this whole process.

So if Senator Hatch would like to say anything further, I would not preclude him from doing so, but I remind you that debate is to be in closed session.

Senator **Hatch**. Well, let me just say this, Mr. Chairman: I am concerned. This is not some inconsequential matter. I think we have heard testimony here that you could draw a number of conclusions from one way or the other. Some of it was not heard at the trial.

We are dealing here with a man whose life, witnesses have testified, at least from a legal standpoint and an honorability standpoint, has been a good life and who is a sitting Federal district court judge, or at least a present Federal district court judge, and whose whole life and reputation is on the line.

True, he has had every right, according to some, defended in the judicial system of this country, but we are not part of that except insofar as we have specific legislative responsibilities.

I am having a lot of trouble in this area because if in fact the Government did conduct a vendetta against this judge, and there is some indication that that may have been the case, it is very difficult to say or to tell whether that vendetta included manipulating and even, some have indicated, suborning witnesses to testify against him, and perhaps even manipulating facts and evidence.

So all I want to express is this is very trying to me, this is a very difficult problem to me, and I think to others on this committee, and I am not sure that we should not consider every possible avenue to protect this judge's right to be heard by a separate branch of Government as provided by the Constitution. That is what it is for.

Now, I agree. I will reserve any debate points afterwards, but I just want to express my concern. I really am concerned about it, and I am not sure that his rights are protected.

The **Chairman**. I would recall to the minds of the members of the committee that this, of course, is not a new subject for us.

Senator **Hatch**. No; it is not.

The CHAIRMAN. We discussed it at the time we discussed the original ruling of the Chair. I would further say, out of consideration for the views that have been expressed by the committee here, that at the first break we will have a conference and we can review the ruling of the Chair in the light as was contemplated by that ruling. The ruling itself provides for such a review.

But as of now, the ruling stands, and we will limit questions of Mr. Skelton to the shaping or influencing of testimony, and we will ask him to remain available subject to the call of the committee, and I am sure he will comply.

Mr. SKELTON. Sure.

The CHAIRMAN. Senator Pressler had the floor.

Senator PRESSLER. If the return was not audited by the IRS but it came from a grand jury, what is the normal role? Do the Government prosecutors, do you become a part of a team? What would your motivation have been to prepare a witness?

Mr. SKELTON. The preparing of the witness was just a normal pretrial—that is something we do with all witnesses in all trials, as far as I know. You pre-interview the witness prior to the time they testify.

Senator PRESSLER. Is there a difference in procedure if the IRS has audited this return and found it faulty and initiates it? In this case, the IRS was brought in, so to speak, as a result of the grand jury.

Mr. SKELTON. As a result of information obtained, yes, through the grand jury.

Senator PRESSLER. So if one were to say that an IRS agent had a motivation to prepare a witness, it would more likely be one that the IRS had audited the return and found something wrong and was advocating it?

Mr. SKELTON. Well, I would certainly hope the IRS had no motivation to prepare a witness. I mean, in terms of shaping or influencing their testimony, pursuant to the trial, the audit is something different, Senator Pressler, than an actual income tax trial. What we are talking about here is talking to the witnesses prior to the trial.

Senator PRESSLER. But do you know, for example, when you start preparing a witness or working with a witness, do you know if this initiated within the IRS?

Mr. SKELTON. Oh, no, sir. This was—I mean, this is initiated by the Department of Justice attorneys for whom we were working at the time. I do not know if it came entirely clear, but during this entire period of time we are talking about, I was not working as an IRS agent. I was working as an agent detailed to the public integrity section of the Department of Justice to help them with their investigation and with the subsequent prosecution of the case.

Senator PRESSLER. OK, fine. Thank you.

The CHAIRMAN. Senator Warner.

Senator WARNER. Mr. Skelton, you had 24 years of service, and much of it has been devoted to this area of the law; is that correct?

Mr. SKELTON. Criminal investigation work?

Senator WARNER. Could you speak up a little bit?

Mr. SKELTON. Yes, sir; for the entire 24 years, I have been a special agent.

Senator **Warner**. You have handled what, several thousand cases?

Mr. **Skelton**. No; not several thousand. I have been involved in maybe a hundred or so, Senator.

Senator **Warner**. A hundred or so in 24 years?

Mr. **Skelton**. Yes;

Senator **Warner**. Well, then, you have certainly talked to a lot of witnesses, though?

Mr. **Skelton**. Yes, I have.

Senator **Warner**. The two accountants that have come in here, in my opinion, have done their best—certainly Mr. Watson—to portray themselves as individuals that really do not have a great deal of knowledge about the tax law.

Now, Mr. Wright, I think, did his best, but you gain certain impressions about his level of knowledge. Certainly Watson time and time again professed the absence of knowledge.

Now, in your judgment, what was Mr. Watson's level of knowledge with respect to tax law, regulation, and the ability to deal with issues which I feel are fairly fundamental? A lot of Americans go out and fill in their returns, millions of them, without the assistance of tax counsel.

Mr. **Skelton**. Senator, I interviewed Mr. Watson also, and I do not think I had any more luck with him than you did. So it was pretty hard for me to make a determination, too.

I had trouble with him in obtaining what I felt was a straight answer.

Senator **Warner**. Did you gain any feeling of what knowledge he may have had of just the fundamentals, like the difference between capital gains and losses and income and schedules and things of this nature?

Mr. **Skelton**. Yes, Senator. When I first contacted him, I asked him if he knew the difference between cash and accrual accounting, and he indicated that he did. I asked him if he knew that legal fees should be reported as ordinary income, and he said he did. It was along that line, yes, sir.

Senator **Warner**. As we have sat here for these several days—and I am speaking only for myself—this room is awash with conflicting statements and fact. We have, on the one hand, two accountants which I characterize as Tweedle-Dum and Tweedle-Dee, and probably one of the ablest men that have sat on the Federal bench. I say that after having examined carefully many of his opinions and read them.

We are right at the point of trying to decide was there, in accordance with article II, willfulness and knowledge on his part as he made and subscribed his 1980 tax return. That is the issue.

You have dealt with that issue throughout this case, have you not?

Mr. **Skelton**. Yes; in terms of gathering evidence, yes.

Senator **Warner**. Do you have an obligation, presumably, to inform your superiors if there comes a point in time when you feel there is not sufficient information to sustain a charge of willfulness and knowledge?

Mr. **Skelton**. Yes; I do.

Senator WARNER. Was there any time during the course of your investigation and the interrogation of the witnesses and so forth that you had that feeling, based on your many years of experience?

Mr. SKELTON. That I had reservations?

Senator WARNER. Yes.

Mr. SKELTON. Well, certainly, when I first started. I mean, when we first started, there was a lack of information. As the case developed, I felt there was more information that showed willfulness.

Senator WARNER. What are those, say, five or half a dozen facts that you feel sustain the conclusion that there was willfulness and knowledge on the part of Judge Claiborne as he made and subscribed that 1980 tax return?

The CHAIRMAN. Senator Warner, the Chair is extremely reluctant to intervene, but we are trying to ascertain whether Mr. Skelton or any of his associates in the Government influenced or shaped the testimony.

Senator WARNER. Yes; I understand, Mr. Chairman. My follow-up question is to the extent to which he had to talk and review with these witnesses to get to a point where those facts were in such a shape to be submitted to the courts. It would seem to me that he first developed the existence of them and then the extent to which he had to rehearse or work with the witnesses to develop those facts. That is my line of questioning, Mr. Chairman. If I am out of order, I will abide by it.

The CHAIRMAN. Well, if you pursue it, but I think we have to—we held Mr. Goodman down, and he would have loved to have jumped over the traces.

Senator WARNER. Well, I will abide by the ruling of the Chair.

The CHAIRMAN. Well, pursue this line of questioning, but I think we have to be very narrow.

Senator WARNER. What are those facts and how did you develop those facts by way of working with the witnesses and the documentation?

Mr. SKELTON. The facts developed through the way the return was prepared for 1979, the listing of legal fee income, the way Mr. Wright determined it, the fact that he——

Senator WARNER. "He" being who, now? The antecedent of "he" is Claiborne or Wright or Watson?

Mr. SKELTON. Mr. Claiborne and Mr. Wright. Then the fact that the letter, the alleged letter, did not tie in with any of the timing or the chronology there. That was, I would think, particularly important with respect to 1979.

Senator WARNER. Now, when you say the letter, could you identify that letter?

Mr. SKELTON. The April 11, 1980, letter.

With respect to 1980, it was not always clear, to me, at least, and I think there was some testimony that the $88,500 possibly was not on that schedule at the time it was prepared. The other was generally——

Senator WARNER. Excuse me. When you say schedule, could you be more definitive as to whether it was the handwritten note, presumably submitted by Judge Claiborne, or schedule D in the tax return?

Mr. SKELTON. My initial impression was that it was not on either one, on the schedule D or on this. Then——

Senator WARNER. You mean item 2 up there was not present in the initial drafting of that docment?

Mr. SKELTON. There was initially testimony on that, yes, sir. There were indications of that.

Senator WARNER. So the preparer of this document put down "1," left a gap; then "3" and "4" and "5" was inserted by the assistant——

The CHAIRMAN. Now, the Chair has to intervene, really, on behalf of counsel here because Mr. Skelton has no basis for answering those questions.

Senator WARNER. Very well.

The CHAIRMAN. He could speculate, but we are not here to speculate.

Senator WARNER. I will stop, but I say that he is the man that interrogated the witnesses and presumably made the decision to go forward with the case.

The CHAIRMAN. Well, we will hold him here, if necessary, until the snow flies, and when I say the snow flies, not only in Washington, but in Alabama, if you want to. But we are not going to go—I do not think we can go into it in the present state of the case.

Senator BINGAMAN. Mr. Chairman, just to express a point of view, maybe you want to discuss this separately, but I feel that once he has given direct examination testimony on these matters that he just did, I think that counsel should be allowed to question him.

The CHAIRMAN. Well, that is exactly the Chair's concern in this whole matter. We would like to maintain the limits pending some further ruling.

Senator GORE. Mr. Chairman, just a couple of brief questions. Mr. Skelton, you testified yesterday that you had dinner with Mr. Wright last Friday night before these proceedings began. Was that at your initiative?

Mr. SKELTON. Mr. DeBruin called me up.

Senator GORE. Pardon me?

Mr. SKELTON. Mr. DeBruin called me up and said the Wrights would like to talk to me and possibly have dinner with me.

Senator Gore Did you discuss the facts underlying this case at that dinner?

Mr. SKELTON. No, sir.

Senator GORE. You did not discuss what was likely to be the subject of testimony here?

Mr. SKELTON. No, sir.

Senator GORE. At all?

Mr. SKELTON. No, sir.

Senator GORE. Thank you, Mr. CHAIRMAN.

The CHAIRMAN. Senator Heflin.

Senator HEFLIN. Let me ask you: You are a special agent?

Mr. SKELTON. Yes, sir.

Senator HEFLIN. That term to people that prepare income taxes carries a connotation, does it not, of some fear?

Mr. SKELTON. I hope not, but perhaps so.

Senator **Heflin**. Well, in other words, if a tax preparer or a knowledgeable taxpayer is confronted by an IRS agent, I would say that the average individual in America has a little uneasy feeling; but if he comes into a tax preparer with the title of special agent, that generally connotates and creates some atmosphere of much more reservation than it does toward the more normal Internal Revenue agent. Would you not say that?

Mr. **Skelton**. Yes, sir; possibly.

Senator **Heflin**. And the reason is that special agents deal with fraud.

Mr. **Skelton**. Yes.

Senator **Heflin**. And whenever an Internal Revenue agent comes in with the title of special agent, then the preparer or the taxpayer—if he had the taxpayer's knowledge—but I assume all preparers have some sort of feeling that this case involves the potential of fraud or the potential of criminal prosecution?

Mr. **Skelton**. Yes, sir.

Senator **Heflin**. Now, I have observed and you have, I suppose, observed the testimony of some of the tax preparers in this, and there is, certainly within the realm of their demeanor in testifying, that one could conclude that the primary motivation in that testimony has been to protect their own hide. Would you say that that is within the realm of the trier of facts in this case to conclude that the testimony given by the tax preparers in this case is that you could conclude that the main motivation is to protect their own hide?

Mr. **Skelton**. Well, I do not think I could tell the panel what to conclude, Senator.

Senator **Heflin**. All right. Well, maybe that was an unfair question.

Well, let me ask you this: Is it generally true from your observation that whenever a special agent comes to a tax preparer, that generally they are concerned about protecting their own hides?

Mr. **Skelton**. I do not think that it would necessarily be the case, Senator.

Senator **Heflin**. Would that be true between the distinction between a professional and just a business tax preparer, such as I would say, a CPA and a normal public accountant who just prepares tax returns? Would he have more of a feeling of doing that?

Mr. **Skelton**. I would think that would depend on the individual, Senator.

Senator **Heflin**. Depend on the individual. You are probably right there.

Have you observed among some that evidence, an atmosphere and an attitude to protect their own hide, that they tend to bend over backward to cooperate with you and other agents of the Government whenever a special agent fraud or criminal prosecution might be involved?

Mr. **Skelton**. Well, I am not sure I know how—I mean, some might not even talk to me. I would think, there, again, that would depend on the individual person that you are talking to.

Senator **Heflin**. So it depends on the individual attitude. All right. Those individuals that you conclude are trying to protect their own hide, are they amenable to the powers of suggestion?

Mr. SKELTON. There, again, I think that would depend on the individual. I mean, if they are trying to protect their own hide, they may tell me to leave before I get the door open. I do not know that I can answer that.

Senator HEFLIN. Well, it depends on individuals, and I suppose triers of fact have to determine each individual separately from the way he would do it, and that would be true and relative to the cooperation that are the amenability to powers of suggestions that they would give the Internal Revenue Service when a special agent comes, sits before them and introduces and starts talking with them.

Mr. SKELTON. Yes. It would depend on the individual. I cannot answer for everybody.

Senator HEFLIN. Were you one of the representatives of the Internal Revenue Service as a member of what has been termed a strike force?

Mr. SKELTON. No, sir. I was assigned to the Public Integrity Section of the Department of Justice.

Senator HEFLIN. You were in the Public Integrity Section?

Mr. SKELTON. I was detailed to them, even though I was——

Senator HEFLIN. But you were not assigned to this specific group of Department of Justice lawyers who were investigating it? You were not a normal assigned person doing it who customarily worked with them?

Mr. SKELTON. I worked with them but as a member of—detailed as kind of a member of their staff. There was an FBI agent and there was another IRS agent that was assigned.

Senator HEFLIN. Well, were you individually assigned or were you customarily assigned to work with this specific task force or strike force?

Mr. SKELTON. I would not characterize it as a task force or strike force.

Senator HEFLIN. Well, what did you call it? I wonder what it is called.

Mr. SKELTON. It was an investigation being conducted.

Senator HEFLIN. Investigation team, we will call it that.

Mr. SKELTON. OK.

Senator HEFLIN. People have used this other language. This specific investigative team, were you customarily assigned to them? Were you customarily working with them, or was this a separate, individual assignment?

Mr. SKELTON. This was a separate individual assignment for this case.

Senator HEFLIN. That is all.

The CHAIRMAN. Mr. Goodman, you look like a steer about to burst out of the chute there.

Mr. GOODMAN. Mr. Chairman, there is nothing I would rather do than to broaden this.

The CHAIRMAN You know that I am not going to let you do that at this point.

Mr. GOODMAN. I know that, and I am going to ask some very careful questions which I think are within the parameters of what we are doing here, because I think it is going to be helpful.

REDIRECT EXAMINATION

Mr. GOODMAN. Mr. Swanson—pardon me. You are right. I am anxious

Mr. Skelton, at the time that you were assigned to the Public Integrity Section, you were an IRS special agent in the Las Vegas IRS office; is that not correct?

Mr. SKELTON. The Reno, NV, sir.

Mr. GOODMAN. In Nevada?

Mr. SKELTON. Yes.

Mr. GOODMAN. Who was the director of the IRS in Nevada?

Mr. SKELTON. At that time it was Mr.—I think it was Mr. Swanson.

Mr. GOODMAN. Mr. Gerald Swanson, correct?

Mr. SKELTON. I am not sure that he was the director at that time. He may have been transferred, and we may have had an acting director. I just am not sure.

Mr. GOODMAN. Do you recall whether or not Mr. Swanson was asked to cooperate with the FBI in their investigation of Judge Claiborne and refused to do so because he would not deal with Joseph Conforte?

Mr. SKELTON. I have no knowledge of that, sir.

Mr. CHABRAJA. Objection, Mr. Chairman. I think that Mr. Goodman is blatantly violating the ruling of the Chair.

The CHAIRMAN. Where are you going?

Mr. GOODMAN. Mr. Chairman, I am going to show how he gets to the Public Integrity Section, because what takes place is Mr. Swanson refuses to cooperate with the FBI. Then what takes place is the FBI takes that decision to regional counsel's office, and they sustain Mr. Swanson. They are saying do not cooperate as far as Conforte is concerned.

Then what happens, Mr Chairman, is they circumvent the usual procedures, and instead of acting within the IRS context, they make him a special deputy, in effect, with the Public Integrity Section.

The CHAIRMAN. Well, of course, the Conforte issue is not before us, No. 1.

Second, you have not really explained how that bears upon activities of Mr. Skelton in shaping or influencing witnesses, which is the limit of our concern at the moment.

Mr. GOODMAN. He joins the band of thieves, so to speak, at that point in time. He is their agent, he is working under their supervision and control.

The CHAIRMAN. The Chair would observe that is an unfortunate metaphor.

Mr. GOODMAN. Well, they stole a lot from the judge. But they were out to get him, and that is what I wanted to show; that he was getting directions from people who had a motive to get the judge, who circumvented usual procedures, and he was acting as their agent.

Mr. CHABRAJA. Mr. Chairman, I restate my objection. We heard this very argument for an hour-and-a-half Tuesday morning, is my memory, in the form of a proffer. We have had a very specific ruling on it. Mr. Goodman chooses to ignore that at least twice a day.

I will not say any more.

Mr. Chairman, I would like to offer one further remark. I think the issue we presented here when we presented only two witnesses—Mr. Wright on the issue of 1979 and Mr. Wilson on the issue of 1980, who was an expert, that the Government had never seen before, I put him on here—is, not what was stolen from Judge Claiborne's house, but what Judge Claiborne stole from the U.S. Government when he underreported his income in 2 years. And we continue to drift away from that issue and explore the motives of Government prosecutors and whether they were hard of heart with respect to this man. It is not proper and not probative.

Mr. Goodman. Unfortunately, Mr. Chairman, what we have when we are limited this way, with all due respect, we have a stilted, stultified presentation because when we are limited, we do not get the true facts.

I will represent that this man has not conveyed what really happened. They were going after these tax preparers initially to ascertain whether or not there was any evidence that Mr. Conforte bribed the judge. And initially in the indictment, the judge was charged for a tax violation for 1978.

The Chairman. Mr. Goodman, we have given you an opportunity to show, if you can, that any Government agent influenced or shaped the testimony of witnesses. Now, that is all we can do at this time. That is the way the rule is.

Now, if you want to ask who was Mr. Skelton's supervisor, who did he take his orders from, I think that is within that scope. But I think to try to create a whole scenario goes beyond the purpose that we have Mr. Skelton here for at this time. If the situation changes, you would have a chance, as well as anybody else, to pursue the broader question.

Mr. Goodman. You were working with the Public Integrity Section; is that correct?

Mr. Skelton. Yes.

Mr. Goodman. And there was a team that was set up on behalf of the Public Integrity Section to investigate the judge, was there not?

Mr. Skelton. No, sir. There was one attorney.

Mr. Goodman. Well, was there not one FBI agent who was specially assigned to them?

Mr. Skelton. I do not know if he was assigned. He was an FBI agent. I do not think he was detailed to the Public Integrity Section.

Mr. Goodman. Was he not working virtually exclusively on the Claiborne matter on behalf of the Public Integrity Section?

Mr. Skelton. He was working on that, but I do not know if that was exclusively. I would not know what else he was working on, sir.

Mr. Goodman. That is Mr. Jesinger, is it not?

Mr. Skelton. That is Mr. Jesinger.

Mr. Goodman. And you would discuss matters with Mr. Jesinger, would you not?

Mr. Skelton. Relating to this case, yes, sir.

Mr. **Goodman**. And you would go out and you would collect matters from various citizens that you thought were pertinent to the investigation, and before you turned them over to the grand jury, you would give them to Mr. Jesinger and the two of you would go over them, would you not?

Mr. **Skelton**. We did.

Mr. **Goodman**. And you would pick and choose what the grand jury would get, did you not?

Mr. **Skelton**. No, sir.

Mr. **Goodman**. Did you get a bonus for the conviction?

Mr. **Skelton**. No, sir. I got——

Mr. **Goodman**. You got what?

Mr. **Skelton**. No, sir.

Mr. **Goodman**. You did not get any reward or commendation as a result of Judge Claiborne's conviction?

Mr. **Skelton**. Just so that the——

Mr. **Goodman**. Yes or no?

Mr. **Skelton**. No.

Mr. **Goodman**. OK.

Mr. **Skelton**. Now, may I explain, Senator? I did get an award between the time of the indictment and the conviction. I did not get an award for the conviction.

The **Chairman**. Mr. Chabraja?

Mr. **Chabraja**. No further questions

The **Chairman**. Mr. Skelton, you are excused for the moment, but as you understand from what has transpired this morning, your services may again be required. So we ask you to remain available.

Mr. **Skelton**. Yes, sir.

The **Chairman**. Thank you.

[Witness excused.]

The **Chairman**. Mr. Goodman, call your next witness.

Mr. **Goodman**. Mr. Jesinger.

The **Chairman**. Mr. Jesinger is out of the room but will be called for.

[Pause.]

The **Chairman**. If the managers are prepared, members will take their seats.

Mr. Jesinger, do you swear that the testimony that you are about to give in this impeachment proceeding will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. **Jesinger**. Yes, sir, I do.

The **Chairman**. Mr. Goodman.

Mr. **Goodman**. Thank you, Mr, Chairman.

DIRECT EXAMINATION

Mr. **Goodman**. State your name and spell your last name for the record.

Mr. **Jesinger**. Richard Jesinger, J-e-s-i-n-g-e-r.

Mr. **Goodman**. Mr. Jesinger, you are an FBI agent, are you not?

Mr. **Jesinger**. That is correct.

Mr. **Goodman**. A special agent?

Mr. **Jesinger**. Yes.

Mr. GOODMAN. Assigned to investigate criminal activity?

Mr. JESINGER. Yes.

Mr. GOODMAN. And is your principal office in Las Vegas, NV?

Mr. JESINGER. Yes, sir.

Mr. GOODMAN. How long have you been in Las Vegas, NV, as an FBI agent?

Mr. JESINGER. Nine years.

Mr. GOODMAN. During that time were you assigned an investigation of Judge Claiborne?

Mr. JESINGER. Yes, sir.

Mr. GOODMAN. When?

Mr. JESINGER. I believe it was July 1981.

Mr. GOODMAN. Who assigned you?

Mr. JESINGER. My immediate supervisor advised me that I was assigned the investigation.

Mr. GOODMAN. Who was that?

Mr. JESINGER. James Perry.

Mr. GOODMAN. And did you have any discussions with Joseph Yablonsky about the investigation of Judge Claiborne?

Mr. JESINGER. During the investigation I was called in to brief him on the investigation, the progress of the investigation.

Mr. GOODMAN. Was Joseph Yablonsky the head of the FBI in Las Vegas?

Mr. JESINGER. That is correct.

Mr. GOODMAN. The agent in charge?

Mr. JESINGER. Yes, sir.

Mr. GOODMAN. Did he express the fact that he wanted to get Judge Claiborne to you?

Mr. JESINGER. No, sir.

Mr. GOODMAN. Did he give you any indication to that effect?

Mr. JESINGER. No, sir

Mr. GOODMAN. He did not at any time tell you that Judge Claiborne was disliked by him?

Mr. JESINGER. No, sir.

Mr. GOODMAN. He never commented personally about Judge Claiborne to you?

Mr. JESINGER. No, sir.

Mr. GOODMAN. Never expressed an opinion to you?

Mr. JESINGER. No, sir.

Mr. GOODMAN. All right. And when you initially were assigned to investigate Judge Claiborne, for what office were you working? The U.S. attorney, strike force or somebody else?

Mr. JESINGER. Working for the FBI.

Mr. GOODMAN. All right. Just on your own, is that correct, without being responsible to or reporting to an attorney?

Mr. JESINGER. Well, there were attorneys assigned to the case, yes, sir.

Mr. GOODMAN. All right. Who was the attorney who was assigned to the case?

Mr. JESINGER. Initially, I believe it was Andrew Reisch and later Steve Shaw.

Mr. GOODMAN. All right. And who is Andrew Reisch?

Mr. JESINGER. He is an attorney with the Public Integrity Section, U.S. Department of Justice.

Mr. **Goodman**. All right. And was the investigation about Judge Claiborne relating to the Conforte matter?

Mr. **Jesinger**. That is correct.

Mr. **Goodman**. Was it also relating to the LaRue matter?

Mr. **Jesinger**. This investigation, which started in July 1981, dealt with the Conforte allegations.

Mr. **Goodman**. Is it not a fact that you were investigating Judge Claiborne prior to July 1981?

Mr. **Jesinger**. Prior to that, the investigation centered on Eddie LaRue.

Mr. **Goodman**. Is it not a fact that you were investigating Judge Claiborne prior to July 1981?

Mr. **Jesinger**. I was not investigating Judge Claiborne prior to 1981.

Mr. **Goodman**. Is it your testimony that the investigation of Eddie LaRue in no way was connected to Judge Claiborne?

Mr. **Jesinger**. He was one of the individuals that was mentioned as hiring Eddie LaRue to install a wiretap device. The investigation was still centered on Eddie LaRue.

Mr. **Goodman**. Would you tell this committee, if you know, why the—well, let me ask you this: Where is the Public Integrity Section located?

Mr. **Jesinger**. In Washington, DC.

Mr. **Goodman**. And are there ever Public Integrity Section lawyers in Las Vegas prosecuting Las Vegas cases which are unrelated to public officials?

Mr. **Jesinger**. I have no knowledge of that.

Mr. **Goodman**. All right. In other words, Public Integrity lawyers prosecute judges or politicians and the like; is that not correct?

Mr. **Jesinger**. I believe so.

Mr. **Goodman**. All right. And Eddie LaRue was a private detective, was he not?

Mr. **Jesinger**. That is correct.

Mr. **Goodman**. He was not a judge?

Mr. **Jesinger**. That is correct.

Mr. **Goodman**. He was not a politician?

Mr. **Jesinger**. Correct.

Mr. **Goodman**. And yet the Public Integrity Section sent out Mr. Reisch from Washington, DC, to prosecute, correct?

Mr. **Jesinger**. That is correct.

Mr. **Goodman**. And you were working with him?

Mr. **Jesinger**. Yes, sir.

Mr. **Goodman**. Let me ask you the question again. Was not the investigation of Mr. LaRue pursued in an effort to get Judge Claiborne?

Mr. **Jesinger**. That is incorrect.

Mr. **Goodman**. Do you know whether or not offers were ever made to Mr. LaRue to testify against Judge Claiborne in return for having Mr. LaRue's charges dismissed?

Mr. **Chabraja**. Mr Chairman, I would like to interpose an objection. I have listened for a while, and it is clear that Mr. Goodman is in the area of targeting as described by the Chair and is excluded pursuant to the motion in limine.

The CHAIRMAN. I would have to agree with that objection, Mr. Goodman. I think we are here to see what influence has been exercised over the testimony of witnesses, how their credibility may have been affected, and we are talking about the tax case.

Mr. GOODMAN. Mr. Jesinger, did you have the occasion to speak with Joseph Wright at any time prior to his testifying in Reno in the first trial?

Mr. JESINGER. I was present during one of the interviews of Mr. Wright prior to the trial.

Mr. GOODMAN. When was that?

Mr. JESINGER. I believe it was going to be like in October of—I am not too sure—of 1983. I do not remember the dates.

Mr. GOODMAN. October 1983?

Mr. JESINGER. That is just my guess.

Mr. GOODMAN. Let me try to refresh your recollection. The indictment was returned on December 8, 1983. Does that help you?

Mr. JESINGER. I recall the indictment date. That is why I believe it definitely was before the indictment.

Mr. GOODMAN. All right. And who was present?

Mr. JESINGER. Special agent Don Skelton of the Internal Revenue Service.

Mr. GOODMAN. Mr. Skelton was present?

Mr. JESINGER. That is correct.

Mr. GOODMAN. Who else?

Mr. JESINGER. During the first interview, I believe it was just agent Skelton.

Mr. GOODMAN. Where was the interview?

Mr. JESINGER. At Joseph Wright's office.

Mr. GOODMAN. And do you know what an FBI 302 Form is?

Mr. JESINGER. Yes, sir.

Mr. GOODMAN. What is it?

Mr. JESINGER. It is a report of the interview of a particular individual.

Mr. GOODMAN. What is the purpose of it?

Mr. JESINGER. To record the information as relayed to you, the investigator.

Mr. GOODMAN. For what purpose?

Mr. JESINGER. To be utilized by the prosecutors in determining the direction of the case.

Mr. GOODMAN. What other purpose? To record the transaction, correct?

Mr. JESINGER. That is correct.

Mr. GOODMAN. So you will be able to testify about it at some future time, correct?

Mr. JESINGER. Yes, sir.

Mr. GOODMAN. And also to furnish it to a witness so the witness will be able to refresh his recollection as to what took place at a prior time before he has to testify, correct?

Mr. JESINGER. That is not correct.

Mr. GOODMAN. All right. It is your testimony that 302 Forms are not shown to witnesses before they testify?

Mr. JESINGER. I do not show them to witnesses before they testify. That is correct.

Mr. Goodman. Do you know whether the U.S. attorney or strike force attorney or Public Integrity attorney who prosecutes the case has the 302's which you prepare?

Mr. Jesinger. I am sure they do.

Mr. Goodman. Do you know whether or not they show them to the witnesses?

Mr. Jesinger. I do not know that.

Mr. Goodman. Do you know whether or not defense attorneys are permitted to get the 302 after a witness testifies under the Jenks Act?

Mr. Jesinger. That is a decision for the judge to make at the time.

Mr. Goodman. Where is the 302 for that date?

Mr. Jesinger. I do not have it with me.

Mr. Goodman. Where is it?

Mr. Jesinger. It is in the files in Las Vegas, NV.

Mr. Goodman. Did you know you were going to be testifying here?

Mr. Jesinger. Certainly.

Mr. Goodman. You knew what you were going to be testifying about, did you not?

Mr. Jesinger. No, I did not.

Mr. Goodman. Nobody ever told you that you were going to be called here as a witness concerning your shaping the testimony of various persons who testified against Judge Claiborne?

Mr. Jesinger. That was all. There was no direct information as to which witness or what actually was——

Mr. Goodman. You came 2,700 miles and did not bring a file with you?

Mr. Jesinger. No, sir, I did not bring any files with me.

Mr. Goodman. When is the next time you spoke to Mr. Wright?

Mr. Jesinger. I believe there was a time that he, because of his health, gave a deposition. I was present during that, but I did not speak to him then.

Mr. Goodman. Did you take a 302 of that occasion?

Mr. Jesinger. I believe only the fact that a deposition was taken.

Mr. Goodman. At that point in time were you working as a special agent of the FBI and special agent of the FBI only?

Mr. Jesinger. That is correct.

Mr. Goodman. Is it not a fact you were also acting or representing yourself as an agent of the grand jury?

Mr. Jesinger. That is incorrect.

Mr. Goodman. You never did that?

Mr. Jesinger. No, sir.

Mr. Goodman. Do you know whether Mr. Skelton did?

Mr. Jesinger. No, sir, not in my presence.

Mr. Goodman. All right. Did you and Mr. Skelton receive information from people in the community and go through that information before turning it over to the grand jury?

Mr Jesinger. Yes, we did.

Mr. Goodman. And were you selective in what you turned over to the grand jury?

Mr. Jesinger. No, sir.

Mr. Goodman. Did you sort it?

Mr. JESINGER. I provided whatever information was given to me.

Mr. GOODMAN. Well, what did you do? Summarize the material?

Mr. JESINGER. If it was documents, the documents were given intact to the attorney handling the matter. If it was an interview, the results of the interview were provided to the attorney

Mr. GOODMAN. On a 302 Form?

Mr. JESINGER. That is correct, when it was——

Mr. GOODMAN. All right. When is the next time you saw Mr. Wright?

Mr. JESINGER. I believe the next time I actually talked to him was just before the first trial.

Mr. GOODMAN. And how long did you speak with him?

Mr. JESINGER. I was present only at brief moments. I did not actually sit in and talk to him about his testimony or anything he was going to say. I was in and out of the room at the time.

Mr. GOODMAN. Did you make a memorandum of that?

Mr. JESINGER. No, I did not.

Mr. GOODMAN. Did you overhear anything that Mr. Wright said that was pertinent or material?

Mr. JESINGER. He was merely going over what he was going to testify to pertaining to his tax records.

Mr. GOODMAN. That is all?

Mr. JESINGER. That is all I recall.

Mr. GOODMAN. He was just going over his testimony concerning the tax matters?

Mr. JESINGER. That is all I recall, yes.

Mr. GOODMAN. And you were not interested in that?

Mr. JESINGER. That was being handled by agent Skelton who was handling the portion of the tax investigation.

Mr. GOODMAN. Do you know whether agent Skelton was taking any notes?

Mr. JESINGER. I was not aware.

Mr. GOODMAN. When is the next time you saw Mr. Wright?

Mr. JESINGER. I believe the next time was just before the second trial.

Mr. GOODMAN. All right. And how long did you spend with him?

Mr. JESINGER. I do not believe I spent much time at all. The same way, I did not sit down and talk to him personally face to face. I was only in the room on occasion when he spoke to agent Skelton.

Mr. GOODMAN. All right. How long were you in the room with him when he was speaking?

Mr. JESINGER. Could not have been a total of 15 minutes.

Mr. GOODMAN. Did you make a memorandum of it?

Mr. JESINGER. No, I did not

Mr. GOODMAN. So the only memorandum was the first time you met him, and that is back in Las Vegas?

Mr. JESINGER. That is correct.

Mr. GOODMAN. You never made any other memorandum?

Mr. JESINGER. The only other memorandum was when I mentioned that he was giving a deposition. I made a 302 at the time that he did appear for the deposition.

Mr. GOODMAN. Did you make any rough notes?

Mr. JESINGER. I believe during the first interview; yes.

Mr. GOODMAN. Where are the rough notes?

Mr. JESINGER. They are in Las Vegas, NV.

Mr. Goodman With the Chair's permission, I am going to show the witness exhibit No. 36.

Do you recognize this, Mr. Jesinger?

Mr. JESINGER. Yes, sir.

Mr. GOODMAN. When did you first see it?

Mr. JESINGER. I believe it was toward the end of the first trial.

Mr. GOODMAN. That is not your writing in the upper right hand corner?

Mr JESINGER. No, sir.

Mr. GOODMAN. Is it your testimony that nobody, either the prosecutors or Mr. Skelton, ever showed you exhibit No. 36, which is the April 11, 1980, letter, until you were well into the first trial?

Mr. JESINGER. I do not recall seeing that until the first trial.

Mr. GOODMAN. Did you do anything in your capacity as a Federal Bureau of Investigation agent to go out and investigate the background of this particular exhibit?

Mr. JESINGER. I do not recall doing any independent investigation concerning that exhibit.

Mr. GOODMAN. Did you ever bother to ask anybody about the background concerning this exhibit?

Mr. JESINGER. I believe I spoke with agent Skelton about it.

Mr. GOODMAN. You did not go out and speak to Mr. Wright about it?

Mr. JESINGER. I do not believe so. I do not believe I went out and talked to him about it.

Mr. GOODMAN. Did you talk to any other witnesses to interview them before the first trial?

Mr. JESINGER. Oh, yes, several.

Mr. GOODMAN. Who?

Mr. JESINGER. Mr. Goodman, there are well over 100 interviews in this case.

Mr. GOODMAN. Did you take 302's of all those interviews?

Mr. JESINGER. The interviews concerning the bribery allegations, I did record the interviews.

Mr. GOODMAN. How about as far as the tax allegations?

Mr. JESINGER. In the majority of the cases, those were handled by Agent Skelton or agent Halper, if he was present.

Mr. GOODMAN. Is it not a fact that as to one of the counts—I believe it was count 5 of the indictment—that that pertained to Judge Claiborne's 1978 tax return?

Mr. JESINGER. I do not remember which count pertained to it.

Mr. GOODMAN. Do you recall that the indictment initially charged a violation of the tax laws for three years, 1978, 1979 and 1980?

Mr. JESINGER. I do recall that, yes.

Mr. GOODMAN. All right. Did you participate in gathering information about 1978?

Mr. JESINGER. I do not believe so. I was not that involved in the tax investigation.

Mr. GOODMAN. You were involved in the Conforte part of it?

Mr. JESINGER. That is correct.

Mr. GOODMAN. And is it not a fact that the 1978 alleged violation was contingent on the credibility of Joseph Conforte?

Mr. JESINGER. That was part of it; yes.

Mr. GOODMAN. Was it not the Government's theory that——

Mr. CHABRAJA. Objection, Mr. Chairman. I do not think we need to try the Conforte case. Again, Mr Goodman is far afield.

The CHAIRMAN. Well, if it is material to shaping or influencing testimony, but we are on the outer limits, I think, Mr. Goodman.

Mr. GOODMAN. All right. When, Mr. Jesinger, did you first feel that you had a case against Judge Claiborne?

Mr. JESINGER. One thing I want to make certain here is that I never went out to "feel" if we had a case against Judge Claiborne. The allegations were made. I gathered the facts, presented them to the U.S. Department of Justice for their determination.

Mr. GOODMAN. That is all?

Mr. JESINGER. That is all.

Mr. GOODMAN. With the limitations, that would be the last question.

The CHAIRMAN. Mr. Chabraja.

Mr. CHABRAJA. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Rudman.

Senator RUDMAN. Agent Jesinger, when were you notified that you would be coming here to Washington to testify before this panel?

Mr. JESINGER. I believe it was Tuesday night I received a call, and Wednesday morning I received authority to travel.

Senator RUDMAN. Did you receive the call from your superior in Nevada or from somebody here in Washington?

Mr. JESINGER. The initial call came from a Mr. Mike Davidson, I believe, advising me I would probably be called to testify at the impeachment. I notified our headquarters because I needed authority to make the trip, and I was advised Wednesday morning that the paperwork was being drawn up and I should go ahead and make arrangements to travel.

Senator RUDMAN. Agent Jesinger, did you discuss with anyone in the FBI or Department of Justice or any other individual employed by the U.S. Government whether or not you should bring the file regarding Judge Claiborne to these proceedings today?

Mr. JESINGER. No, I did not.

Senator RUDMAN. That was a decision you just made yourself?

Mr. JESINGER. Approximately 2 weeks ago we xeroxed the entire file, main file, and all the interviews, and I submitted them to our headquarters.

Senator RUDMAN. So you did not discuss whether or not you ought to bring the file today with anyone; you just decided yourself that you would not bring it?

Mr. JESINGER. I am not the custodian of the records. That was not a decision I could make.

Senator RUDMAN. Right. But you did not attempt to get the records; you just decided to do what you were told and come here?

Mr. JESINGER. That is correct.

Senator RUDMAN. Thank you.

The CHAIRMAN. Senator Warner.

Senator WARNER. In the course of your duties, have you handled a number of tax matters?

Mr. JESINGER. No, sir.

Senator WARNER. Did you interview either Mr. Wright or Mr. Watson?

Mr. JESINGER. Yes, sir.

Senator WARNER. Do you have any feeling for their level of knowledge as it relates to tax law and tax regulation?

Mr. JESINGER. With my limited knowledge of tax laws, I felt that Mr. Wright definitely knew the accounting principles involved in preparing forms. I felt confident he knew what he was talking about.

As for Mr. Watson, I was not sure if he——

Senator WARNER. I cannot hear you.

Mr. JESINGER. I am sorry. As for Mr. Watson, I was not sure if he knew anything about the tax, but, then again, I am not an investigator of tax violations.

Senator WARNER. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Bingaman.

Senator BINGAMAN. Could I just ask, when did you first interview Judge Claiborne to get his statement as regards these tax issues?

Mr. JESINGER. I am sorry. When did I first?

Senator BINGAMAN. When did you first interview Judge Claiborne to get his statement as to these tax issues?

Mr. JESINGER. I believe it must have been in 1983. I do not recall the date. I do recall that we were notified that there was a—this yellow paper was available. I believe it was probably after we talked to Jerry Watson after he testified the first time.

Senator BINGAMAN. In relation to the indictment, can you tell us was it shortly before, was it several months before?

Mr. JESINGER. Probably 4 or 5 months before the indictment, December 1983.

Senator BINGAMAN. That is all I have, Mr. Chairman.

The CHAIRMAN. Senator Heflin?

Senator HEFLIN. You were shown exhibit 36, which is a letter of April 11, 1980. I wonder if somebody would show you that.

In different handwriting from the handwriting of the body of the letter, in the right-hand corner of the letter as I look at the letter, is the notation in handwriting of "11/83, first shown to him," and it appears to be by "D" or by something. There is some mark hardly legible to me.

Do you know who placed that on exhibit 36, on this letter?

Mr. JESINGER. No, sir, I do not.

The CHAIRMAN. Mr. Bingaman.

Senator BINGAMAN. Let me just ask one followup question to my earlier question. When you spoke to Judge Claiborne in that first interview regarding these tax issues or in any of your subsequent interviews with him prior to the indictment, did he mention a letter, such as this April 4 letter, 1980 letter, which might have been sent to Mr. Wright? April 11, excuse me.

Mr. JESINGER. No, sir. I do not recall it being mentioned.

The CHAIRMAN. Mr. Goodman.

Mr. GOODMAN. I would like to elaborate on that.

FURTHER DIRECT EXAMINATION

Mr. GOODMAN. When you spoke to Judge Claiborne, it was a very limited conversation, was it not?

Mr. JESINGER. Yes, sir.

Mr. GOODMAN. It concerned solely the matter of Judge Claiborne providing to you the yellow pieces of paper, which is exhibit No. 10; is that not correct?

Mr. JESINGER. Yes, that is correct.

Mr. GOODMAN. And would it not be fair to state that at the time that this exhibit was provided to the FBI—a copy of it was provided, correct?

Mr. JESINGER. That is correct. Later on; yes.

Mr. GOODMAN. And you did not participate in the discussion with Judge Claiborne; is that not correct?

Mr. JESINGER. That is correct

Mr. GOODMAN. The person who discussed the matter with Judge Claiborne was a Mr. James Perry, right?

Mr. JESINGER. That is correct.

Mr. GOODMAN. And you do not know what Mr. Perry discussed with Judge Claiborne, do you?

Mr. JESINGER. I was present during the interview; yes.

Mr. GOODMAN. But it was he who was responsible for this particular project, right, to get the yellow sheets of paper?

Mr. JESINGER. Well, I would not say he was responsible for it. It was during the investigation, this had been brought to our attention, and we wanted to see the paper.

Mr. GOODMAN. Right, but the limited purpose of the meeting was to get the paper, correct?

Mr. JESINGER. Talk to him about the paper, that is correct.

Mr. GOODMAN. Right. It was not to talk about anything else, was it?

Mr. JESINGER. That is correct.

Mr. GOODMAN. It did not concern letters for other tax years, for the year 1979, did it?

Mr. JESINGER. I did not talk to him concerning anything to do with the tax situation other than this letter.

Mr. GOODMAN. All right. The agreement was, really, you were there just to pick up exhibit No. 10.

Mr. JESINGER. Yes, the yellow copy.

Mr. GOODMAN. That was the only purpose to have the meeting?

Mr. JESINGER. That is correct.

The CHAIRMAN. Senator Pryor.

Senator PRYOR. Mr. Chairman, I apologize. I had to be out of the room for a few moments, and I would like to pursue one line of questioning, if I might, relative to the alleged burglaries in the office of Mr. Jay Wright.

Those alleged dates were July 3, 1980; December 24, 1980; January 12, 1981. Were you involved in any way with entering or causing to have entered Mr. Wright's office seeking anything relative to Judge Claiborne's taxes?

Mr. JESINGER. No, sir.

Senator PRYOR. Were you knowledgeable about an alleged burglary or a series of burglaries into Mr. Wright's accounting office?

Mr. **Jesinger**. Not until this week when I heard the report of it.

Senator **Pryor**. You had no knowledge of these so-called burglaries at the time of the two respective trials in the Federal courts?

Mr. **Jesinger**. No, sir. I had no knowledge of the burglaries.

Senator **Pryor**. I am seeking, and I do not have it here, I am seeking the transcript wording of the statement given by Mr. and Mrs. Wright before this committee relative to their first visit or two with the agents of the IRS and the FBI. We are searching for that actual part of the record.

It was my opinion or I felt viscerally that the Wrights were saying that this was a pretty tough visit; in other words, that this visit was one that—I do not want to use the word "intimidation," but it was a pretty stern encounter with the IRS and the FBI at this time.

Now, did you sense that you were in any way promulgating an encounter like this with Mr. and Mrs. Wright during those early visits relative to Judge Claiborne?

Mr. **Jesinger**. No, sir, I did not. In fact, after making the appointment, Mr. Wright at the time was suffering from overexposure of a radiation treatment for cancer, and he was having difficulty breathing because of his oxygen. He had pure oxygen he was breathing the entire time. So we went very slow, very cautiously; we did not want to do anything to upset the man, and he certainly was just an individual we were talking to about the tax preparation.

Senator **Pryor**. Mr. Chairman, I think at this time this is all.

The **Chairman**. Mr. Goodman.

Mr. **Goodman**. Nothing further.

The **Chairman**. Mr. Chabraja.

Mr. **Chabraja**. Nothing further.

The **Chairman**. Mr. Jesinger, there may be some occasion for further testimony from you. We appreciate your making the trip to Washington and your being here today. We have to ask you, however, to give us the further consideration of staying in town, subject to the call of the committee.

Mr. **Jesinger**. Certainly.

Mr. **Goodman**. Excuse me, Mr. Chairman. I am a little slow; I was a little slow. I would respectfully request the Chair to conduct an examination of the sealed material once again, to ascertain whether or not the FBI-302 which Mr. Jesinger prepared would be contained therein. It should be there.

The **Chairman**. Will you repeat, for the benefit of counsel, the 302——

Mr. **Goodman**. Prepared by Mr. Jesinger, that he testified to that he left in Las Vegas. I believe that at least a copy of it should be within the material that is before the committee.

The **Chairman**. I will direct the staff to make such a search.

And to be sure that we get exactly what you want, that is the interview that he had——

Mr. **Goodman**. Mr. Jesinger testified that he did prepare one 302 pertaining to a discussion with Mr. Wright.

The **Chairman**. So it is the Jesinger-Wright 302.

Mr. **Goodman**. Yes. And I believe he said he did that in July.

The CHAIRMAN. I will direct staff to make that search, and we will advise you.

Mr. GOODMAN. Thank you.

Senator PRYOR. Mr. Chairman, one additional question. I hate to belabor this.

Is a 302 form prepared when you visit with other agents, or maybe even your superiors—for example, your visits about this case with Mr. Yablonsky, who was at that time the head of the region of the FBI in Nevada?

Did you prepare a 302 form there?

Mr. JESINGER. No, sir.

Senator PRYOR. Or a memorandum?

Mr. JESINGER. There could be a memorandum for those types of meetings you are talking about.

Senator PRYOR. And where would that memorandum be?

Mr. JESINGER. That would be in the main file, case file.

Senator PRYOR. Could you tell us about your first conversation with Mr. Yablonsky, relative to the Judge Claiborne matter, tax matter?

Mr. JESINGER. Most of my contact on the case was with Jim Perry, my supervisor at the time. And it seemed like right after the investigation was instituted, within 2 or 3 months after I was assigned the investigation, I would be called in to brief Mr. Yablonsky on what was occurring. There were no three—I am sorry—no memorandums prepared on those briefings.

Senator PRYOR. Was Mr. Yablonsky telling you what to go for or what to look for?

Mr. JESINGER. No, sir; he was not. He pretty well left the investigation up to myself and agents that were involved in it, with the Justice Department.

Senator PRYOR. Thank you.

The CHAIRMAN. Thank you.

If there is nothing further, then, Mr. Jesinger, you are excused for the moment, but not to leave the city.

Mr. JESINGER. Yes, sir. I will be around.

Mr. GOODMAN. Leo Halper.

The CHAIRMAN. Will you raise your right hand? Do you swear that the testimony that you are about to give in this impeachment proceeding will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. HALPER. I do.

DIRECT EXAMINATION

Mr. GOODMAN. State your name and spell your last name for the record.

Mr. HALPER. Leo Halper, H-a-l-p-e-r.

Mr. GOODMAN. You are a special agent with the Internal Revenue Service?

Mr. HALPER. Yes, sir.

Mr. GOODMAN. Are you assigned to the Las Vegas office?

Mr. HALPER. No, I am not.

Mr. GOODMAN. Where are you assigned?

Mr. HALPER. Reno, NV.

Mr. GOODMAN. Do you work out of Las Vegas?

Mr. HALPER. No.

Mr. GOODMAN. Did you work out of the Las Vegas office?

Mr. HALPER. Yes, I did.

Mr. GOODMAN. When?

Mr. HALPER. From 1972 until October of last year.

Mr. GOODMAN. Were you assigned to the investigation of Judge Harry Claiborne?

Mr. HALPER. Yes, sir.

Mr. GOODMAN. When did you get assigned to that?

Mr. HALPER. The early part of 1983.

Mr. GOODMAN. How early?

Mr. HALPER. I—let's see—I reviewed grand jury material relating to the investigation, I believe it was in January.

Mr. GOODMAN. January of 1983?

Mr. HALPER. Yes, sir.

Mr. GOODMAN. When you say you reviewed grand jury material, was that before the grand jury received it or after they received it?

Mr. HALPER. After.

Mr. GOODMAN. And with whom were you working on the investigation of Judge Claiborne?

Mr. HALPER. I was the only special agent with IRS assigned to it.

Mr. GOODMAN. All right. Was Mr. Skelton working on it?

Mr. HALPER. Yes.

Mr. GOODMAN. Now, you don't include him as a special agent with IRS for purposes of this investigation; is that correct?

Mr. HALPER. That is correct.

Mr. GOODMAN. For purposes of the investigation Mr. Skelton, for whatever reasons, was assigned as a special agent of the Public Integrity Section, right?

Mr. HALPER. He was detailed to the Department of Justice to assist; that's correct.

Mr. GOODMAN. To the Public Integrity Section of the Department of Justice.

Mr. HALPER. I don't know. I—I'm not sure what section.

Mr. GOODMAN. But you were acting in the role of a special agent of the IRS.

Mr. HALPER. That's correct.

Mr. GOODMAN. A criminal investigator.

Mr. HALPER. Yes, sir.

Mr. GOODMAN. Was there any revenue agent working along with you to consider the civil aspects of the investigation?

Mr. HALPER. One was assigned, late in the investigation.

Mr. GOODMAN. When?

Mr. HALPER. I don't know exactly. It would have been—I'm estimating maybe August of 1983.

Mr. GOODMAN. So your investigation was directed to see whether or not you believed a crime had taken place?

Mr. HALPER. That's correct.

Mr. GOODMAN. And you were investigating what years?

Mr. HALPER. I believe it was 1979, 1980, and 1981.

Mr. GOODMAN. How about 1978?

Mr. HALPER. I think we may have looked at that year, yes.

Mr. **Goodman**. How about 1978 being a year which was included in the indictment; does that refresh your recollection?

Mr. **Halper**. Yes, that would have been included.

Mr. **Goodman**. So you were looking at 1978, 1979, 1980, and 1981; is that it?

Mr. **Halper**. Yes, sir.

Mr. **Goodman**. And initially, you were just looking for 1978 and 1979, weren't you?

Mr. **Halper**. No. I think they were all included initially. I would have to check the records.

Mr. **Goodman**. Don't you recall that you were conducting the investigation with an aim to ascertaining whether or not Judge Claiborne omitted alleged bribes, claimed to have been made to him by Joseph Conforte?

Mr. **Halper**. That was one of the allegations.

Mr. **Goodman**. And that was the primary thrust of your initial investigation, was it not?

Mr. **Halper**. No, it was not.

Mr. **Goodman**. All right. When did you start to investigate the tax matters as far as Internal Revenue violations were concerned?

Mr. **Halper**. I believe it would have been in approximately May 1983.

Mr. **Goodman**. In May 1983. What grand jury was considering the Claiborne tax situation in May 1983?

Mr. **Halper**. The Reno grand jury.

Mr. **Goodman**. All right. When you were up in Portland, was the Portland grand jury considering tax violations?

Mr. **Halper**. Not that I know of. I was not in Portland, Mr. Goodman

Mr. **Goodman**. OK, but you said you started the investigation from your perspective in January 1983, some 5 months, if I understand your testimony, before Reno took jurisdiction over the Internal Revenue investigation.

Mr. **Halper**. I didn't say that I started the investigation in January. I said I reviewed certain grand jury material in January.

Mr. **Goodman**. Secret material, right?

Mr. **Halper**. It was grand jury material.

Mr. **Goodman**. Right, material which is covered by rule 6 of the Federal Rules of Criminal Procedure, right?

Mr. **Halper**. Yes, sir.

Mr. **Goodman**. And you were authorized to do that?

Mr. **Halper**. Yes, sir.

Mr. **Goodman**. You weren't doing it just for your interest, generally, of Judge Claiborne, were you; you were doing it in order to see whether or not there was a tax violation, right?

Mr. **Halper**. I was evaluating it——

Mr. **Goodman**. Yes or no; please.

Mr. **Halper**. Repeat the question, please.

Mr. **Goodman**. You were looking at the material in January 1983 to see whether there was a tax violation, weren't you?

Mr. **Halper**. Whether there were indications of tax violations, yes, sir.

Mr. GOODMAN. And you knew at that point in time that there was no jurisdiction by the Portland grand jury over Judge Claiborne's taxes, didn't you?

Mr. HALPER. No.

Mr. GOODMAN. Nobody told you that?

Mr. HALPER. That's correct.

Mr. GOODMAN. When is the first time you interviewed a witness in this investigation?

Mr. HALPER. June 1983.

Mr. GOODMAN. Who did you interview?

Mr. HALPER. I think Mr. Watson probably was the first one.

Mr. GOODMAN. All right. Now, do you have procedures when you conduct an interview, as far as memorializing the interview?

Mr. HALPER. Yes.

Mr. GOODMAN. What are they?

Mr. HALPER. We—there's numerous ways you could do it. You could make a memorandum of the interview. You could take an affidavit. You could take a question-and-answer statement.

Mr. GOODMAN. OK. Did you make a memorandum?

Mr. HALPER. I don't believe I did on that occasion.

Mr. GOODMAN. Did you take an affidavit?

Mr. HALPER. No, sir.

Mr. GOODMAN. Did you make rough notes?

Mr. HALPER. No, sir.

Mr. GOODMAN. Do you have any documentation in the world that you could refer us to which would reflect what took place in your initial conversation with Jerry Watson?

Mr. HALPER. There may have been a memorandum. Special Agent Skelton was—I accompanied him, or we were together during it, and he may have made one. I don't recall. It was prior to his grand jury appearance.

Mr. GOODMAN. Where did this take place?

Mr. HALPER. In the Reno Federal Building. .

Mr. GOODMAN. And you don't know of any memorandum of your own knowledge.

Did you search your file before you came here to see whether or not you had any memoranda?

Mr. HALPER. No, sir. I wasn't asked to.

Mr. GOODMAN. Did it dawn on you—did you know why you were being subpoenaed here?

Mr. HALPER. Not really.

Mr. GOODMAN. Did anybody tell you that you were going to be asked questions concerning your contact with witnesses and whether, during that contact, you may have shaped the witnesses' testimony?

Mr. HALPER. No, sir.

Mr. GOODMAN. Nobody advised you of that?

Mr. HALPER. No, sir.

Mr. GOODMAN. Did you ever dream of going to your custodian of records and saying, "Can I have the memoranda which I prepared?"

Mr. CHABRAJA. Objection, Mr. Chairman.

Unless this witness received a subpoena duces tecum, I think the law of this land is very clear that they have no obligation or responsibility to dig through their files and bring baggage with them. Mr. Goodman had this man on his subpoena list, offered no subpoena duces tecum request; what is this line of inquiry about?

Mr. GOODMAN. Oh, please. That's unfair, Mr. Chairman. I submit that under the circumstances, that is an unfair accusation as far as my performance of my obligation. The Chair just, I believe, 2 days ago gave us the ruling that he would permit these witnesses to come here on the limited issue. I was not permitted to have subpoenas issued by the committee until that ruling. The committee then called these gentlemen and told them to be here.

It is not a question of my being derelict in my responsibilities.

Mr. CHABRAJA. No question of dereliction, Mr. Chairman. It was a statement of fact. And what the charge is is that Mr. Goodman is putting questions to the witness in a pejorative manner about not bringing documents that weren't solicited or elicited. And it is improper.

The CHAIRMAN. Mr. Goodman is correct that Mr. Halper is here as a result of arrangements made by the committee in an effort to provide every opportunity to explore the troublesome aspects of this case, and with particular emphasis upon the question of credibility of witnesses and if anything occurred which would affect the credibility of witnesses. And I think it is fair to inquire what preparations Mr. Halper made and what he brought with him. I think it is also fair to make it clear that Mr. Halper did not have any instructions with respect to bringing any records

Mr. GOODMAN. Mr. Halper, did you think that it might be helpful to refresh your recollection as to your participation in the investigation to have brought records with you?

Mr. HALPER. If I would have known what the line of questioning was going to be, I would have done that. I just——

Mr. GOODMAN. How many memoranda did you prepare?

Mr. HALPER. I don't—I don't know. I wouldn't know without checking.

Mr. GOODMAN. More than one?

Mr. HALPER. Yes, I'm sure.

Mr. GOODMAN. Is it your policy to prepare a written memorandum or some documentation to memorialize the event of an interview?

Mr. HALPER. If it is appropriate, yes.

Mr. GOODMAN. Is that IRS procedure?

Mr. HALPER. I don't know.

Mr. GOODMAN. When you work for the IRS, don't they teach you what you are supposed to do as far as interviewing witnesses?

Mr. HALPER. Yes, sir.

Mr. GOODMAN. And during that course, didn't they tell you you are supposed to take statements from the witnesses, or make a record of what the witnesses told you so it could be used in the future if somebody can't remember a particular event?

Mr. HALPER. Yes, sir.

Mr. GOODMAN. And you like to follow your rules, don't you?

Mr. HALPER. Yes, sir.

Mr. GOODMAN. Did you follow your rules in all instances where you conducted a conversation with a witness in the Claiborne investigation?

Mr. HALPER. I believe so, sir. I'm not sure if there was a memorandum made on that initial contact with Mr. Watson or not. There may have been. I—the only way that I could say for sure is if I checked the files.

Mr. GOODMAN. Should there have been?

Mr. HALPER. I would say yes.

Mr. GOODMAN. All right. Do you recall meeting with Mr. Watson on July 28, 1983, at McCarron Airport?

Mr. HALPER. Yes, sir.

Mr. GOODMAN. And what was the circumstances of you meeting him there?

Mr. HALPER. I believe I was picking someone up at the airport. I was at the airport on some business, and I just happened to run into him in the baggage area.

Mr. GOODMAN. Was he coming back from Reno, to your knowledge?

Mr. HALPER. I think he was, yes.

Mr. GOODMAN. From a grand jury appearance?

Mr. HALPER. I believe so.

Mr. GOODMAN. And did you have the occasion to speak to him?

Mr. HALPER. Yes, sir.

Mr. GOODMAN. Did you make a memorandum of that conversation?

Mr. HALPER. Yes, sir, I did.

Mr. GOODMAN. And where is that—back in Nevada, as well?

Mr. HALPER. Yes, sir.

Mr. GOODMAN. All right. And in that conversation, did you ask Mr. Watson who was paying for his lawyer?

Mr. HALPER. Yes, I did

Mr. GOODMAN. Did he indicate that he was paying for the lawyer?

Mr. HALPER. I think he stated that those arrangements had not yet been worked out.

Mr. GOODMAN. Did you accuse Mr. Watson of Harry Claiborne paying Mr. Semenza to represent Mr. Watson?

Mr. HALPER. I don't believe I said that.

Mr. GOODMAN. What did you say about that?

Mr. HALPER. I asked him who was paying for his attorney.

Mr. GOODMAN. Did you say that, "Judge Claiborne is paying for your attorney?"

Mr. HALPER. I don't recall saying that, no.

Mr. GOODMAN. Are you denying it?

Mr. HALPER. I don't recall it, Mr. Goodman.

Mr. GOODMAN. Would it be in your memorandum if you said it?

Mr. HALPER. Yes, sir.

Mr. GOODMAN. You would put that down there All right.

Mr. HALPER. Yes, sir.

Mr. GOODMAN. Did you tell him that you had known for 2 weeks that Semenza was being sent in?

Mr. HALPER. I believe that may have—I don't recall that, Mr. Goodman.

Mr. GOODMAN. Do you recall whether or not you told him at the airport that, "If you were smart, Mr. Watson, you'd better get a lawyer that is representing you?"

Mr. HALPER. I don't recall that, either, no, sir.

Mr. GOODMAN. Are you denying it?

Mr. HALPER. I don't recall.

Mr. GOODMAN. Are you denying it?

Mr. HALPER. I'm saying that I don't recall it.

Mr. GOODMAN. Did you say to Mr. Watson, "You are digging a deeper hole, and nobody is going to bail you out?"

Mr. HALPER. No, sir.

Mr. GOODMAN. Did you accuse him of being a liar?

Mr. HALPER. No, sir.

Mr. GOODMAN. At no time?

Mr. HALPER. I didn't say that, "You are a liar." I——

Mr. GOODMAN. What did you say?

Mr. HALPER. I told him that I felt that he wasn't being entirely candid, possibly not being honest in his dealings with us.

Mr. GOODMAN. Did you identify yourself as an IRS special agent when you had this conversation?

Mr. HALPER. He already knew who I was. He approached me at the airport.

Mr. GOODMAN. How did he know who you were?

Mr. HALPER. Because I had interviewed him on previous occasions.

Mr. GOODMAN. And when is the next time you saw Mr. Watson?

Mr. HALPER. I don't recall.

Mr. GOODMAN. Did you see him again?

Mr. HALPER. I don't really remember.

Mr. GOODMAN. Would you have made a memorandum, if you can recall?

Mr. HALPER. Yes, sir.

Mr. GOODMAN. And that's back in Nevada?

Mr. HALPER. Pardon me?

Mr. GOODMAN. That's back in Nevada

Mr. HALPER. Yes, sir.

Mr. GOODMAN. Did you speak to Mr. Wright at any time?

Mr. HALPER. Yes, sir.

Mr. GOODMAN. When?

Mr. HALPER. Again, I'd have to refresh, you know, my recollection with my notes. It would have been sometime during the summer, I believe, of 1983.

Mr. GOODMAN. Where?

Mr. HALPER. In his office.

Mr. GOODMAN. Who else was present?

Mr. HALPER. Special Agent Skelton, Special Agent Jesinger, Steve Shaw—who was the Government attorney. I believe that was all.

Mr. GOODMAN. And what took place that day?

Mr. HALPER. We took a sworn statement from him.

Mr. GOODMAN. All right. Who prepared the statement?

Mr. HALPER. Mr. Shaw did most of the questioning.

Mr. GOODMAN. Well, was the statement prepared before you got there?

Mr. HALPER. The statement——

Mr. GOODMAN. That you wanted—was this a written statement that we are talking about?

Mr. HALPER. No; I think it was recorded. I don't recall.

Mr. GOODMAN. A deposition?

Mr. HALPER. Yes.

Mr. GOODMAN. All right. When is the next time that you saw Mr. Wright?

Mr. HALPER. I think I may have gone to his office subsequent to that to pick up some documents. I just don't remember.

Mr. GOODMAN. Did you ever speak to him about the case?

Mr. HALPER. Yes, sir.

Mr. GOODMAN. Did you speak to him about what he did as far as the tax preparation was concerned?

Mr. HALPER. Well, like I said, the main conversation relating to that took place in the deposition, and Mr. Shaw did most of the questioning in that.

Mr. GOODMAN. I am talking about on the subsequent occasion when you went to his office.

Mr. HALPER. No, sir.

Mr. GOODMAN. Do you know whether or not the deposition was transcribed?

Mr. HALPER. Yes, sir, it was.

Mr. GOODMAN. Do you know whether it was given to Mr. Watson?

Mr. HALPER. Whether it was given to——

Mr. GOODMAN. Yes.

Mr. HALPER. Not that I know of.

Mr. GOODMAN. How about to Mr. Wright?

Mr. HALPER. I would assume he would have had to sign it. I did not have him sign it.

Mr. GOODMAN. Do you know whether a copy was left with him?

Mr. HALPER. No, sir.

Mr. GOODMAN. Did you see Mr. Wright after that?

Mr. HALPER. I believe Mr. Skelton and I saw him on one other occasion, also.

Mr. GOODMAN. Did you make a memorandum of that?

Mr. HALPER. I believe that one of us did, yes, sir.

Mr. GOODMAN. And that is back in Nevada, right?

Mr. HALPER. Yes, sir.

Mr. GOODMAN. If you are making up a memorandum as to a witness interview, would you state who was present during the interview?

Mr. HALPER. Yes, sir.

Mr. GOODMAN. All right. Now, I am going to show you what has been placed into evidence as exhibit No. 23, which purports to be certain statements made by your colleague, Mr. Skelton, and ask whether or not there is any reference to you being present at any time during any of these interviews.

Mr. HALPER. What is your question, Mr. Goodman?

Mr. GOODMAN. Whether or not there is any reference in the memorandum as to you being present during any of the interviews.

Mr. HALPER. Not at these interviews, no, sir.

Mr. GOODMAN. All right. Nothing further.

The CHAIRMAN. Mr. Chabraja?

Mr. CHABRAJA. Mr. Chairman, I have an affidavit, apparently executed by Mr. Halper, that I found in the public records at the courthouse in Reno, NV, and I would ask that the secretary mark it as House exhibit 40, and I would ask——

The **Chairman**. Could you further identify it as public records; where in the public records?

Mr. **Chabraja**. It is a public record in the post conviction proceeding before Judge Hoffman in the district court in Nevada.

The **Chairman**. And does it have a date?

Mr. **Chabraja**. May 7, 1986.

The **Chairman**. Has Mr. Goodman seen it?

Mr. **Chabraja**. I am comfortable that he has seen it. [Handing document to Mr. Goodman.]

[Pause.]

Mr. **Goodman**. I have no objection to it.

Mr. **Chabraja**. If I can get this marked.

[Whereupon, the document referred to was marked House exhibit No. 40 for identification.]

CROSS-EXAMINATION

Mr. **Chabraja**. Mr. Halper, I am going to hand you a document, a six-page document, identified at the top as "Affidavit of Leo B. Halper." The document has three punches in it, which were put on by me to put it in a notebook.

I will ask you to take a look at it.

[Pause.]

Mr. **Halper**. Yes, sir.

Mr. **Chabraja**. Are you familiar with that document, Mr. Halper?

Mr. **Halper**. Yes, sir; I am.

Mr. **Chabraja**. Does this photocopy appear to you to be a true and correct copy of an affidavit that was prepared for your signature?

Mr. **Halper**. Yes, sir.

Mr. **Chabraja**. Turning to the last page, is that a photographic reproduction of your signature?

Mr. **Halper**. Yes, sir.

Mr. **Chabraja**. All right. And that was executed on or about the day that it bears, that is, May 7, 1986?

Mr. **Halper**. Yes.

Mr. **Chabraja**. At whose request did you execute that affidavit?

Mr. **Halper**. It would have been one of the Government attorneys.

Mr. **Chabraja**. Mr. Hendricks or Ms. Little?

Mr. **Halper**. Yes; I think it was Mr. Hendricks or someone in his office.

Mr. **Chabraja**. All right. And that affidavit deals, does it not, with your various visits with Mr. Watson, or at least some of them?

Mr. **Halper**. Yes, sir.

Mr. **Chabraja**. Mr. Chairman, I would offer this affidavit at this time as evidence of prior consistent statements, consistent with the statement of Mr. Halper made here today.

Mr. **Goodman**. I am going to object on that basis That rule doesn't even apply to it, because there is no—we are not saying that there is a recent fabrication.

I would like the document in evidence, so I have no objection to it.

Mr. CHABRAJA. I won't quarrel about the basis, Mr. Chairman, and we will reproduce this—or maybe I should lodge it with the secretary.

The CHAIRMAN. Very good.

[Whereupon, House exhibit No. 40 was received in evidence.]

Mr. CHABRAJA. I have no further inquiry of Mr. Halper.

The CHAIRMAN. Senator Bingaman.

Senator BINGAMAN. Mr. Halper, on your conversation with Mr. Watson at the airport, you stated, as I understood your testimony, that you told him you thought he was being less than candid about what had happened with regard to Judge Claiborne's taxes; is that right?

Mr. HALPER. Yes, sir.

Senator BINGAMAN. Is that a normal practice for an IRS special agent to give an opinion to a witness at the time—or when they are talking to them about whether they believe them or not?

Mr. HALPER. Well, in this case, Mr. Watson approached me in the airport—me and Mr. Skelton—and he stated something to the effect, "I hope there's no hard feelings. I don't see why we can't just be friends," or something similar to that.

And I stated, "Under the circumstances, I don't see how that would be possible." And then I told him what I testified to, that is, I didn't believe that he was being candid and honest with us.

Senator BINGAMAN. Did you also—was he a target of the investigation at that time?

Mr. HALPER. No, sir; he was not.

Senator BINGAMAN. Did you say anything to him to indicate that he might be, might become a target?

Mr. HALPER. No.

Senator BINGAMAN. Mr. Watson testified to a conversation, I believe, at the grand jury or outside the grand jury where one of the prosecutors said to Mr. Watson's attorney, "Advise your client that he is a target of this investigation."

Do you know anything about that? Were you present, or are you aware of that conversation?

Mr. HALPER. Yes, I am aware of it.

Senator BINGAMAN. Can you tell me what happened?

Mr. HALPER. That was in Reno—I don't recall the date. I believe it was in July 1983. And Mr. Shaw, I believe, advised Mr. Watson of that.

Senator BINGAMAN. Was that before or after you talked to him at the airport?

Mr. HALPER. I just don't remember. It was pretty close—it probably would have been before, because I—now that I think about it, I would have talked to him at the airport after he was returning from that appearance.

Senator BINGAMAN. So he had been advised in your presence that he was a target of the investigation before you told him you didn't believe his testimony?

Mr. HALPER. It wasn't in my presence. I believe Mr. Shaw advised me of that. But I was aware of it, and—that's correct.

Senator BINGAMAN. That is all I have, Mr. Chairman.

The CHAIRMAN. Senator Warner.

Senator **Warner**. Mr. Halper, do you have any basis on which to judge the level of knowledge that Mr. Watson has about tax law or regulation? First, do you have any experience yourself in this area?

Mr. **Halper**. A little—in preparing tax returns, no, sir, but I deal with it all the time.

Senator **Warner**. In your professional work; not just your own returns?

Mr. **Halper**. Yes, sir, yes, sir.

Senator **Warner**. So you do have a knowledge of the preparation of tax returns and presumably, some fundamental understanding of the Federal Tax Code and regulations?

Mr. **Halper**. Yes, sir.

Senator **Warner**. Now, in your discussions with Mr. Watson, did you gain any impression as to his level of knowledge of expertise in this area?

Mr. **Halper**. Yes; I had an impression of that.

Senator **Warner**. And what is that impression?

Mr. **Halper**. That he didn't have a great knowledge of it.

Senator **Warner**. I'd like to just read one section from this affidavit which was identified earlier as being provided by you, and it recounts the events at the airport.

This is Mr. Watson:

> That evening, July 28, when I arrived at the McCarron International Airport in Las Vegas, Nevada and approached the baggage turnstile to get my baggage, agents Halper and Skelton walked up and began to harass me.
>
> Agent Halper mainly did the talking. He demanded to know who was paying my attorney, Lawrence Semenza. When I replied that I was still working out an arrangement with Mr. Semenza, Halper replied, "Bullshit. Harry Claiborne is paying Semenza, and he is Claiborne's attorney."

Did you make any statement to that effect?

Mr. **Halper**. No, sir.

Senator **Warner**. Do you have any basis on which to believe that Harry Claiborne at one time was paying Semenza?

Mr. **Halper**. I was aware—we were aware of a close relationship there, and we were a little bit surprised, I guess you could say, when Mr. Semenza all of a sudden appeared to represent Mr. Watson.

Senator **Warner**. I continue:

> We have known for two weeks that Semenza was being sent in. If you are smart, you had better get a lawyer that is representing you. You are digging a deeper hole, and nobody is going to bail you out. You are a liar, and we can prove it. Your attorney, Semenza, better make damn clear to you what is meant by a target of grand jury investigation and the consequences of lying and coverup for Judge Claiborne.
>
> I then asked what they thought I was lying about, and Halper responded: "You know damn well what we are talking about. You came up with a very clever explanation of the missing income, and we believe the documents are a lie, and we can prove it. You still have a chance to save your skin. Just come on down to the office and tell the truth, and you are off the hook. Otherwise, you are in big trouble."

Do you recall any conversation in the context of this affidavit?

Mr. **Halper**. I didn't make those statements. I did say at the conclusion of the conversation, "If you want to be a little more"—something to the effect, "If you want to be a little more honest, or if you'd like to talk about this further, feel free to come down and talk to us."

Senator **Warner**. No further questions.

The CHAIRMAN. Senator Rudman.

Senator RUDMAN. Agent Halper, how long have you been in this business?

Mr. HALPER. Fifteen years, sir.

Senator RUDMAN. It is kind of a nasty business sometimes?

Mr. HALPER. Yes, sir.

Senator RUDMAN. You have a lot of confrontation with witnesses, do you not?

Mr. HALPER. Yes, sir.

Senator RUDMAN. And not talking about this particular case, it is not unusual for—and I am not talking about this case—in the course of your work, for people to lie to you?

Mr. HALPER. That is true, sir.

Senator RUDMAN. And you have a lot of very difficult relationships with people from day to day in your business, don't you?

Mr. HALPER. Yes, sir.

Senator RUDMAN. And it is possible that that affidavit although not factually correct in terms of word for word, could generally describe the ambiance of that conversation?

Mr. HALPER. Yes, sir.

Senator RUDMAN. Thank you.

The CHAIRMAN. Senator Heflin.

Senator HEFLIN. Do you remember in this conversation as recited by this affidavit, making a statement to Mr. Watson that, "We have known for 2 weeks that Semenza was being sent in"?

Mr. HALPER. I don't recall that statement, sir, no.

Senator HEFLIN. Well, did you have any prior knowledge before the appearance of Semenza as an attorney for Mr. Watson that he was being sent in?

Mr. HALPER. I just don't remember. It would have been Mr. Skelton who would have informed me of that, because he was in Reno, and I was elsewhere. But I think I'd have to check the memorandum on that, sir; I just don't remember.

Senator HEFLIN. Do you have a memorandum separate and apart from—well, I will withdraw that.

After this conversation at the airport, did Mr. Watson change his testimony in any way?

Mr. HALPER. No, sir; I don't believe he did.

Senator HEFLIN. Then, you feel that Mr. Watson's testimony—did you hear him testify here?

Mr. HALPER. No, sir; I didn't.

Senator HEFLIN. You did not.

I believe that's all.

Senator DECONCINI. Mr. Chairman.

The CHAIRMAN. Senator DeConcini.

Senator DECONCINI. Mr. Halper, if I recall the testimony, you were at the airport, and Mr. Watson sought you out; is that what you said?

Mr. HALPER. Yes. He approached us. I wouldn't have approached him.

Senator DECONCINI. What were you doing at the airport?

Mr. HALPER. As I said, I believe I was picking up someone—I think I was picking up either some baggage or possibly another agent. I just don't remember.

Senator DECONCINI. Is that information in your report or anyplace?

Mr. HALPER. I don't—I recall my memorandum of that, and I'm not sure that it said the reason why I was there or not; I don't believe so.

Senator DECONCINI. Was it business? Do you recall it being business?

Mr. HALPER. Yes, sir; it was.

Senator DECONCINI. And you were there, and out of the blue, Mr. Watson approaches you; is that what happened?

Mr. HALPER. Well, he noticed us, and we noticed him, and he approached us.

Senator DECONCINI. And who started the conversation—you or——

Mr. HALPER. He did.

Senator DECONCINI. He did?

Mr. HALPER. Yes, sir.

Senator DECONCINI. And was he the——

The CHAIRMAN. Your testimony is that he started the conversation?

Mr. HALPER. Yes, sir.

Senator DECONCINI. Thank you, Mr. Chairman.

And how long did that conversation last?

Mr. HALPER. I'd estimate no more than 5 minutes.

Senator DECONCINI. Did he accuse you of being there to see him?

Mr. HALPER. No; I don't recall that, no, sir.

Senator DECONCINI. Thank you.

The CHAIRMAN. Senator Pryor.

Senator PRYOR. Mr. Halper, who was the director of the FBI in the State of Nevada during this period of time which is under question?

Mr. HALPER. I think it was Mr. Yablonsky.

Senator PRYOR. Did you have many conversations or meetings with Mr. Yablonsky about Judge Claiborne's tax situation?

Mr. HALPER. I am sure I had several conversations with him; yes, sir.

Senator PRYOR. Were you under his direction during this period of time?

Mr. HALPER. No, sir.

Senator PRYOR. I wonder if you could express what you felt to be his attitude about Judge Claiborne?

Mr. HALPER. Well, he was determined to get to the truth of the matter.

Senator PRYOR. To the truth or a conviction?

Mr. HALPER. I'd say the truth, sir.

Senator PRYOR. Do you feel that Mr. Yablonsky of the FBI felt Judge Claiborne was guilty?

Mr. HALPER. Yes, sir.

Senator PRYOR. Did he so express this to you?

Mr. HALPER. He was aware of virtually all of the evidence, I would say, and I think that was probably his opinion, yes, sir.

Senator PRYOR. Were you aware at this time—and I know that we are trying not to bring the Conforte matter into this—of the attempts with Mr. Conforte to allegedly set up a bribe situation for

Judge Claiborne? Were you aware of all of this that had gone on previously?

Mr. **Halper**. I was aware of it, yes, sir.

Senator **Pryor**. Did you know a Mr. Gerald Swanson?

Mr. **Halper**. Yes, sir.

Senator **Pryor**. And what was his role at this time with you in the State of Nevada? Now, I think I am correct, but is he not the former IRS Director for the State of Nevada?

Mr. **Halper**. That's correct.

Senator **Pryor**. What was his role during this period of time?

Mr. **Halper**. Just the Director. I don't recall having any conversations with him regarding this.

Senator **Pryor**. Was he still onboard, or still in this particular position during this period?

Mr. **Halper**. I don't remember.

Senator **Pryor**. Were you aware that he was either leaving or about to be leaving this position?

Mr. **Halper**. I became aware of that, but I just can't quite recall the timing of that.

Senator **Pryor**. Mr. Halper, did you ever hear that Mr. Swanson might be leaving, because he felt that he was being asked to do something that he did not feel in conscience he could do—did you ever hear this about Mr. Swanson, or did he ever tell this to you?

Mr. **Halper**. No, sir.

Senator **Pryor**. Did you ever hear this about him?

Mr. **Halper**. I knew that he was having problems, but I didn't really know the details, and, as a matter of fact, I still don't.

Senator **Pryor**. You have never talked to Mr. Swanson, then, about this case since he left Nevada?

Mr. **Halper**. I never, since he left or before he left, had one conversation with him regarding this case.

Senator **Pryor**. I think that's all, Mr. Chairman. Thank you.

The **Chairman**. Senator Heflin.

Senator **Heflin**. What was the occasion for you and agent Skelton being at the airport on this occasion when you had this conversation with Mr. Watson?

Mr. **Halper**. Well, I don't believe my memorandum reflects why it was necessary for me to be there. I'm sure it was business related. I was either there to pick up another agent—in fact, I may have been there to pick up Mr. Skelton, or some records, or some baggage. I just don't recall, sir.

Senator **Heflin**. You have no recollection of——

Mr. **Halper**. Well, now that I think about it, I think I was there to pick up Mr. Skelton. I believe I met him at the baggage area and—I'm pretty sure that's the way it was.

Senator **Heflin**. Had Mr. Skelton and Mr. Watson been on the same plane?

Mr. **Halper**. If—if in fact I was there to pick up Mr. Skelton, I would assume they would have been on the same plane. It arrived from Reno at about the same time; yes, sir.

Senator **Heflin**. That's all.

The **Chairman**. Thank you.

Mr. Goodman?

REDIRECT EXAMINATION

Mr. **Goodman**. Just very briefly, Mr. Halper, are you aware of the document called "An Internal Revenue Service Manual"?

Mr. **Halper**. Yes, sir.

Mr. **Goodman**. Have you familiarized yourself with the contents of it?

Mr. **Halper**. I have read certain parts of it, yes, sir.

Mr. **Goodman**. All right. May I approach the witness?

I would like to have this marked, please.

[Whereupon, a document was marked Claiborne exhibit No. 24 for identification.]

Mr. **Goodman**. I am going to show you, Mr. Halper, what has been marked for identification as proposed exhibit No. 24 and ask you whether you are familiar with the contents of that document?

Mr. **Halper**. The whole thing? Well, without reading every single word on here, I would say, "Yes."

Mr. **Goodman**. Without reading every single word, you would say, "Yes." OK. Did you even read some of the pages when you said "yes?"

Mr. **Halper**. Well, it relates to the knowledge of special agents, and giving rights, and the rights of witnesses, and so on. If you want me to read it, I will.

Mr. **Goodman**. Well, are you familiar with it?

Mr. **Halper**. I would say "Yes," sir.

Mr. **Goodman**. How many pages did you look at of the document before you told us under oath you are familiar with it?

Mr. **Chabraha**. Mr. Chairman, may I ask Mr. Goodman to stand away from the witness?

Senator **Rudman**. Mr. Chairman.

The **Chairman**. Senator Rudman.

Senator **Rudman**. Mr. Chairman, I must—and I have been very quiet through all of the examination—I don't really think that is a fair question of this witness.

I mean, if Mr. Goodman wants the witness to read the manual, and if the witness is here under the glare of television lights, then I think we ought to recess for 10 minutes, let the witness read the manual, and then have some reasonable questions addressed to him. But let's not have this witness harassed. I'm sure Mr. Goodman is not trying to harass him, but he has done a good job, and it just looks that way.

So, if we want to examine him on the manual, let's recess for 5 or 10 minutes, let him read it, and let's examine him. Let's not have some half-baked examination here.

The **Chairman**. Well, let's see what Mr. Halper says about his familiarity with it.

Mr. **Halper**. I'm familiar with it.

Mr. **Goodman**. May I have it, please?

Are these the procedures which you are supposed to rely on?

Mr. **Halper**. Yes, sir.

Mr. **Goodman**. And this is made available to you for your study, is it not?

Mr. **Halper**. Yes.

Mr. **Goodman**. As to contact with targets, what does your manual tell you?

Mr. **Halper**. It states that we should make memorandums or other types of recordings of all contacts.

Mr. **Goodman**. All right. Does it tell you that you are supposed to be very careful as far as discussing a matter with a target?

Mr. **Halper**. Yes, sir.

Mr. **Goodman**. And you are supposed to advise the target that the target has a right to be represented and advised by counsel?

Mr. **Halper**. If I was going to interview target, I would certainly tell him that, yes, sir.

Mr. **Goodman**. Well, when you met with Mr. Watson at the airport, you were telling him not to have an attorney, weren't you?

Mr. **Halper**. No, sir; I was not.

Mr. **Goodman**. You were telling him not to have Mr. Semenza, weren't you?

Mr. **Halper**. No.

Mr. **Goodman**. You indicated that you felt somebody was paying Mr Semenza other than Mr. Watson, and it was Judge Claiborne, didn't you?

Mr. **Halper**. I asked who was paying his fee.

Mr. **Goodman**. Why was that your business?

Mr. **Halper**. I thought there may have been conflict.

Mr. **Goodman**. And you had within your knowledge at the time the fact that Mr. Watson had been told that very day he was a target?

Mr. **Halper**. The way I understood the wording is that he could be a target. I'm not sure that he was actually told that he was, in fact, a target.

Mr. **Goodman**. You were told by Mr. Skelton before you picked Mr. Skelton up at the airport that Mr. Watson was told that day that he could be a target.

Mr. **Halper**. I was at the meeting where Mr. Shaw—I don't—I don't recall exactly how that happened. I was in Reno during the conversation where Mr. Shaw made that statement.

Mr. **Goodman**. Rather than go through this point by point, I would move the admission of these pertinent pages of proposed exhibit No. 24——

Mr. **Childers**. That is No. 25.

Mr. **Goodman** [continuing]. No. 25—as the IRS manual, with which the manual is familiar and has testified, properly sets forth the criteria that he is supposed to follow in conducting his activities.

Mr. **Chabraja**. Mr. Chairman, without belaboring the record, I will make a relevance objection It seems to me that this doesn't go to the scope of any contacts.

Mr. **Goodman**. I would submit that it is relevant for several reasons. It is indicative of what procedure the IRS is directed to follow, and it will be up to the committee to see whether or not they followed it.

The **Chairman**. It seems to me to be within the scope of our limited examination, so we'll accept it.

Mr. **Goodman**. Thank you.

[Whereupon, the document previously marked proposed exhibit No. 24 was re-marked Claiborne Exhibit No. 25 and was received in evidence.]

Senator **Bingaman**. Mr. Chairman, may I ask one additional question?

The **Chairman**. Senator Bingaman.

Senator **Bingaman**. I am just trying to determine if there is a conflict in the testimony as to what Mr. Shaw said in the presence of Mr. Watson there in Reno. Mr. Watson, I understood to say that Mr. Shaw handed some papers back to his attorney and said, "You can advise your client that he is a target of this grand jury."

Now, are you saying that that's not what he said?

Mr. **Halper**. I wasn't present when he made that statement. I was aware of it because he advised me later that he had advised Mr. Watson. And I thought it was that he—and I, in fact, have a memorandum of that—but I thought it was that he had advised him that he may be a target.

Senator **Bingaman**. Thank you, Mr. Chairman.

The **Chairman**. Thank you.

Now, Mr. Halper, we appreciate you being here, and we have to ask you, however, that you remain in the city and remain available to the committee, because there may be further questions that we will be asking you.

We also may have further questions of Mr. Watson. I understand Mr. Watson is in the room. I want him to be advised that his testimony may be required, perhaps this afternoon, perhaps later. But we wish him to also remain available.

Thank you, Mr. Halper.

Mr. Goodman, you have one more character witness?

Mr. **Goodman**. Yes; I do, Mr. Chairman.

The **Chairman**. Would you call him?

Mr. **Goodman**. Barry Lieberman.

The **Chairman**. Would you raise your right hand? Do you swear that all the testimony that you are about to give in this impeachment proceeding will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. **Lieberman**. I do.

DIRECT EXAMINATION

Mr. **Goodman**. Please state your name and spell your last name for the record

Mr. **Lieberman**. Barry Lieberman, L-i-e-b-e-r-m-a-n.

Mr. **Goodman**. Where do you reside, Mr. Lieberman?

Mr. **Lieberman**. In Las Vegas, NV.

Mr. **Goodman**. How long have you lived there?

Mr. **Lieberman**. Since April 1983.

Mr. **Goodman**. What do you do for a living?

Mr. **Lieberman**. I am in private practice, a private attorney now, with two other partners.

Mr. **Goodman**. You practice law?

Mr. **Lieberman**. That's correct.

Mr. **Goodman**. Where were you educated?

Mr. **Lieberman**. Rutgers-Camden Law School.

Mr. GOODMAN. And how about your undergraduate?

Mr. LIEBERMAN. State University of New York at Stonybrook.

Mr. GOODMAN. When you graduated law school, what type of employment did you seek?

Mr. LIEBERMAN. I graduated Rutgers-Camden in June 1977 and went to work for the Tax Division of the Department of Justice in the Civil Trial Section in August 1977.

Mr. GOODMAN. And how long did you remain with that Department?

Mr. LIEBERMAN. Until April 1983, when I took a position as an assistant U.S. attorney in the District of Nevada.

Mr. GOODMAN. Did there come a time in your capacity as a Federal attorney representing the IRS to come to Nevada and try cases?

Mr. LIEBERMAN. Approximately 1979 or 1980, the Department of Justice—the Civil Divisions try to divide up their attorneys by region in order to save travel costs—and in 1979-80, I started getting most of the cases in Nevada. Prior to that time, I had been in Kansas, Nebraska, Missouri, and Colorado. Generally, in 1979 and 1980, I started in Las Vegas.

Mr. GOODMAN. All right. And when you practiced in Las Vegas, representing the Tax Division, did you try any cases before Judge Claiborne?

Mr. LIEBERMAN. Yes. I tried a number of cases in front of Judge Claiborne and had numerous motions in front of Judge Claiborne.

Mr. GOODMAN. And those were cases involving taxes, is that correct?

Mr. LIEBERMAN. Civil taxes, yes.

Mr. GOODMAN. Now, in the course of trying those cases in front of Judge Claiborne, were you able to form an opinion as to his knowledgeability as far as the tax laws were concerned?

Mr. LIEBERMAN. Yes, I was.

Mr. GOODMAN. And what was that opinion?

Mr. LIEBERMAN. Although Judge Claiborne was one of the best trial attorneys——

Mr. CHABRAJA. Objection, Mr. Chairman.

This witness has been offered as a character witness, and now all of a sudden, we have him offering expert testimony, allegedly, on Judge Claiborne's knowledge of the Internal Revenue Service Code. I don't think that is competent; it is not what was anticipated; it was not what it was represented to be, and it shouldn't be admitted here.

Mr. GOODMAN. I submit, Mr. Chairman, that it is relevant as far as Judge Claiborne's character trait of honesty and integrity and truth and veracity as far as assigning of the attorney.

The CHAIRMAN. We will permit you to go ahead.

Mr. GOODMAN. Thank you.

Mr. LIEBERMAN. When I first started trying cases in front of Judge Claiborne, and motion practice, I felt that he did not—although he was an excellent trial attorney, there was no question that in the courtroom, he made evidenciary decisions very quickly.

I felt as a representarive of the Tax Division that I had to educate Judge Claiborne with respect to knowledge on tax laws.

Mr. GOODMAN. All right. And was he receptive to that type of education on your part?

Mr. LIEBERMAN. Yes. There is one opinion that is published in F. Supp., the name of it is *Valley Bank of Nevada* v. *Polk,* I believe, where Judge Claiborne basically adopted my brief in formulating his decision.

In essence, Judge Claiborne was an excellent trial attorney, but I did not feel that he had a good grasp of tax matters.

Mr. GOODMAN. Did there come a time that you prosecuted criminal tax cases before him?

Mr. LIEBERMAN. Yes; after I became an assistant U.S. attorney in 1983, I became a criminal prosecutor and did prosecute cases in front of him.

Mr. GOODMAN. And would your evaluation remain the same as far as his knowledge about the tax laws?

Mr. LIEBERMAN. Judge Claiborne was an excellent trial judge, he made evidentiary rulings, but I always felt if there were any complicated legal issues, that it was incumbent upon me to write an excellent brief to educate him.

Mr. GOODMAN. Do you have any opinion as to his character trait of honesty and integrity?

Mr. LIEBERMAN. Yes. In all my dealings with Judge Claiborne, I have the opinion that he has the highest honesty and integrity.

Mr. GOODMAN. Thank you.

The CHAIRMAN. Mr. Chabraja.

Mr. RODINO. Mr. Chairman, the House has a vote in process now, and the managers would request that we recess at this time.

The CHAIRMAN. Is there any chance that we can finish up with this character witness? Do you have questions of him?

Mr. CHABRAJA. We have one.

The CHAIRMAN. Could you wait long enough for this one question, Mr. Chairman?

Senator WARNER. Mr. Chairman, I have one short question.

The CHAIRMAN. At that point, then, we will recess, if you can go right ahead, Mr. Chabraja.

CROSS-EXAMINATION

Mr. CHABRAJA. Mr. Lieberman, in forming your opinion with respect to the judge's sophistication in the tax area, did you have occasion to read his published opinions in the tax area before making the statement you made here today?

Mr. LIEBERMAN. I litigated virtually all the cases——

Mr. CHABRAJA. Well, now, Mr. Lieberman, answer my question. Have you read his published opinions on tax issues?

Mr. LIEBERMAN. I would say most of them, yes.

Mr. CHABRAJA. How many?

Mr. LIEBERMAN. I don't think he has more than three or four published opinions.

Mr. CHABRAJA. What if I told you eight or nine?

Mr. LIEBERMAN. That could be.

Mr. CHABRAJA. You missed a few, then, didn't you?

Mr. LIEBERMAN. That could be.

Mr. CHABRAJA. Thank you.

Senator WARNER. Mr. Chairman, one short question.

The CHAIRMAN. Senator Warner.

Senator WARNER. I have gone back and read the published opinions, and I will be happy to supply the witnesses with photostats. And I have a case where he, Judge Claiborne, and his counsel, Mr. Goodman, were representing people in income tax fraud when he sat as a U.S. district judge and chief judge, and clearly revealing in these opinions a fundamental knowledge of the basics of tax law and regulation.

Mr. Chairman, would it be possible to recall this witness when we resume so that I can talk to him about a few of these opinions, and I'll provide copies for you to read in the interim?

The CHAIRMAN. If the Senator from Virginia wishes it, it will be done.

Would it be convenient for the House to come back at 1:30, or is that too short? Would you rather have 2 o'clock?

Mr. RODINO. Well, we had labored under that being the rule under which the Senate was going to proceed, that it would be between 12 and 2.

The CHAIRMAN. I am just trying to make a little headway, but under those circumstances, we will make it 2 p.m.

Mr. RODINO. Thank you.

[Whereupon, at 12:20 p.m., the committee was recessed, to reconvene at 2, p.m. this same day.]

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

Mr. Lieberman will please return to the stand.

You understand that the oath which you took before the recess is still binding upon you?

Mr. LIEBERMAN. Yes; your honor.

The CHAIRMAN. Senator Warner.

Senator WARNER. Thank you Mr. Chairman.

Mr. Lieberman, I asked the reporter to provide the hearing with the last three questions and answers and, regrettably, that tape has been sent off for reproduction. So I am going to try and reconstruct them from notes that I took.

But before that, Mr. Chairman, I have provided the committee with copies of eight Federal cases which, in my judgment, bear on the issue of the knowledge of Judge Claiborne with respect to tax law and regulation. There are four other cases, but I felt that eight were representative of the points that I wished to make at some point in this hearing. I am just going to lay a foundation now with this witness, and I do so because you made the statement that you "had to educate Judge Claiborne on the knowledge of tax law."

Do you recall having made that statement?

The CHAIRMAN. Senator Warner, would you just suspend?

Has Mr. Goodman seen a copy of these cases?

Senator WARNER. Oh, yes, I provided him. My understanding, it was provided to all counsel.

Mr. GOODMAN. Mr. Chairman, I don't believe I have all eight cases.

The CHAIRMAN. Let me give you this copy right here.

Mr. GOODMAN. I have that list. I do not have the text of all the cases. I have been provided the text, I believe, of four of these cases.

Senator WARNER. Then I'll limit my discussion to four of the cases which you have the text for, and at some other point in the hearing, I may wish to raise this issue again.

Going back to the witness, am I correct that you said "I needed to educate Judge Claiborne on the knowledge of tax law"?

Mr. LIEBERMAN. I believe I made that statement, Senator.

Senator WARNER. During the recess, you were provided by my staff with copies of some of those cases.

Mr. LIEBERMAN. I received three of the cases, one of which was one that I had prepared a trial memorandum on for Judge Claiborne.

Senator WARNER. Now, I don't wish to take up too much time with this particular witness, Mr. Chairman, but in my review of these cases, and one case involves where Judge Claiborne and, by coincidence, his counsel, Mr. Goodman, were the trial lawyers. Is that correct?

That's the case of *United States* v. *Joseph Conforte,* 624 Fed. 2d 869.

Mr. GOODMAN. Mr. Chairman, may I clarify the record on that so there is no misunderstanding?

The CHAIRMAN. Senator Warner, will you yield?

Senator WARNER. Yes, indeed. Thank you.

Mr. GOODMAN. I can see where the Senator got that impression that I was trial counsel in that case. I became involved in the *Conforte* case after the trial was completed. Judge Claiborne represented Sally Conforte, and Bruce——

Senator WARNER. At the trial?

Mr. GOODMAN. At the trial. An attorney who specializes in tax work, Bruce Hockman, represented Joseph Conforte

An issue was raised at the end of the trial as to whether or not the trial judge should have disqualified himself because he had personal knowledge about Mr. Conforte, and had written a letter to the American Bridge Society, I believe, saying that he didn't believe that Conforte should have membership in the Bridge Society.

We had to explore that aspect of the case, and Judge Claiborne, at that point in time, had been advised that he was being considered for the Federal judgeship. He came to me and he said I have to get out of the active participation in this case on behalf of Sally. Will you please get in for new trial purposes and for the appellate purposes? I then entered the case.

So I was not involved in that level.

Senator WARNER. Well, I am going to rely on the records as reprinted. At such time that Judge Claiborne may or may not wish to testify before this committee, perhaps we can clarify.

Mr. GOODMAN. Thank you.

Senator WARNER. But it is clear in this——

Senator HEFLIN. Excuse me. Might I inquire, you've got one, two, three, eight. Which ones are you speaking about?

Senator WARNER. It's not on the list. This is a case—the list is composed of decisions reported in the Federal Reporter where he was the trial judge.

This first case that I'm addressing is where it is reported that one Harry E. Claiborne was on the brief, and as now clarified by Mr. Goodman, at some point in time, he was involved in the trial of the case.

But, nevertheless, my point is in the opinion by the circuit judge, there references are made. This is an appeal from a judgment of a conviction in a tax evasion case further down. The Confortes were convicted on four separate violations of 26 U.S.C. 7201 for willful acts taken to evade or defeat Federal tax, employment taxes for the last quarter of 1974 and the first three quarters of 1975.

Going on, just reading from this opinion, the judge recites willfulness. Willfulness requires a showing of specific wrong intent to avoid a known legal duty. Elsewhere, direct proof of a taxpayer's intent to evade taxes is rarely available. Willfulness may be inferred, however, by the trier of facts from all the facts and circumstances of the attempted understatement of tax. Clearly, there were in this case and, as reported here, Judge Claiborne was involved, issues comparable to the ones before this group today.

Mr. LIEBERMAN. Senator——

Senator WARNER. If I may continue to lay a foundation.

We then proceed to the case. It's a grand jury proceeding of Mr. Bardier, B-a-r-d-i-e-r, reported at 486 Supp. 1203. Here again, if you go through the opinion, and in this instance it was an opinion written by Judge Claiborne, there are clear references to Tax Code, tax law and, in some respect, issues involving those that we are faced with today.

I might cite a third and a fourth case. The case of the *United States of America* v. *Gallo,* G-a-l-l-o, reported in 659 Fed. 2d 110. Here again a case over which Judge Claiborne presided. It's being reviewed by the circuit court of appeals. Again if you look through that opinion, there are references to Federal tax law, regulation, code, and issues not dissimilar to those involved in this case.

My last citation would be the case of *Valley Bank of Nevada* v. *United States,* reported in 528, Fed. Supp. 907.

Now, is that the case in which you were involved?

Mr. LIEBERMAN. Yes; that was the case that I wrote a brief on.

Senator WARNER. Beg pardon?

Mr. LIEBERMAN. That I wrote a brief on.

Senator WARNER. You wrote a brief on.

Mr. LIEBERMAN. Yes.

Senator WARNER. You indicated that that brief is largely incorporated in this opinion?

Mr. LIEBERMAN. I think so, Senator.

Senator WARNER. This is reported in the Federal Reporter used by judges and lawyers all over America, is it not?

Mr. LIEBERMAN. That is correct.

Senator WARNER. Did I understand you to say that you felt the judge basically incorporated your memorandum?

Mr. LIEBERMAN. Well, he wrote his own opinion. But I presented a number of these issues to the judge. He ruled in favor of the United States in this case and did incorporate a number of my arguments in the opinion.

Senator WARNER. Would this be the case which you are inferring that you really had to educate him on the tax law and regulations?

Mr. LIEBERMAN. This case was one of the ones where I felt I needed a strong brief to advise the judge in terms of the legal consequences that were flowing from particular factual situations.

Senator WARNER. When he wrote the opinion, for example, he cited in 1976 Harry Polk was convicted of violation of section 7215, Internal Revenue Code of 1954, for his failure to collect, account for, and pay over income in FICA taxes withheld from the payment of the employees. I'm just going to recite several things.

The question: Did Valley Bank qualify as a holder of a security interest under a section of the code? Then it goes on to expound on that. But clearly in here any reader of this opinion would gain the impression that this member of the Federal bench understood tax law and tax regulation and understood it very, very well. Do you dispute that?

Mr. LIEBERMAN. I think that after he—Judge Claiborne was very good about listening to what you had to say. In other words, when I went out there as an attorney for the Government, I always felt that if I did a good job on my brief that Judge Claiborne would take a look at it and study it. I don't think that he had the knowledge before we briefed and before we orally argued the case. But I do think that he was willing to listen and willing to look at the briefs and render a decision.

Senator WARNER. Well, I'm not sure I understand what it is you're trying to tell us today.

Do you mean that each case that comes along is a new chapter in his life and that he learns at that time, and perhaps didn't know anything beforehand?

Mr. LIEBERMAN. I think in the area of taxes my impression when I first went before Judge Claiborne was that he did not have a good background in taxes.

Senator WARNER. The first case I recited here, in which he was, according to the Federal Reporter, counsel, was preceding his appointment to the bench.

Mr. LIEBERMAN. Yes; may I just expound on that?

Bruce Hockman is a noted criminal tax attorney in the Los Angeles area. He does most of the criminal tax work. Judge Claiborne was in on the case. It was before I was in Nevada. I don't know Judge Claiborne's role in that case. But I can tell you that Bruce Hockman is one of the finest criminal defense—criminal tax defense attorneys on the west coast.

Senator WARNER. Well, Mr. Chairman, I shall not take up further time at this point. We will wait until such time as other witnesses may be able to clarify.

But I'll bring out a pattern of his participation in cases, his rulings as a district judge and, thereafter, rulings of the circuit court of appeals reviewing his actions, in any instance where he was upheld, and provide the dates, and it's a very interesting matrix as it overlays the facts of this case.

But you still wish to represent to this committee that you had to educate him because he did not have a knowledge of tax law and tax regulations.

Mr. LIEBERMAN. Yes, Senator. I felt that he did not have a background as some other district court judges who I practiced before would practice in the tax area. I felt that some district court judges had a good background, but Judge Claiborne, I felt that I always had to brief something very fully and from the bottom up.

Senator **WARNER**. One last question. Millions of Americans every year fill out these tax forms. They don't have the money to hire a tax counsel. They follow their instructions given by the Internal Revenue Service. They deal with capital gains. They deal with income. They deal with schedule C, schedule D.

Have you had a chance to examine the returns of the subject of controversy in this case?

Mr. **LIEBERMAN**. No; I really haven't. I knew not the facts of it——

Senator **WARNER**. Then you're not prepared to answer a question that I have.

Senator **HATCH**. Mr. Chairman.

The **CHAIRMAN**. Senator Hatch.

Senator **HATCH**. Let me just see if I understand what you're saying.

You're saying that criminal tax law in particular is a very specialized field, is that right?

Mr. **LIEBERMAN**. Both civil and criminal.

Senator **HATCH**. Both civil and criminal.

And that there are relatively few people who are considered or who can be considered experts in that field, is that correct?

Mr. **LIEBERMAN**. I think that is correct.

Senator **HATCH**. And you're saying that—I remember I tried a number of criminal tax fraud cases, and I can remember trying them I would be very much up on what was going on in those particular cases, but I didn't consider myself a criminal tax law specialist. And so I would get really up on those cases, but I can't tell you exactly all the defenses and all of the law involved in those cases today, even though I don't think anybody knew it much better than I did for the actual trial of the cases.

And basically we're saying that here's a judge who had no particular background in tax law, in specific tax cases, who you had to educate, and who, because of his own trial experience, legal ability, his own scholarship, could get up on any particular case for any particular occasion.

Is that basically what you're saying? But after the case is over, might not particularly continue to master that particular set of facts or set of laws pertaining to that case?

Mr. **LIEBERMAN**. Yes. And the judge was very good about listening and was good at oral argument. He listened to what you had to say and he read what was in your briefs.

Senator **HATCH**. You're aware that Federal district judges have law clerks?

Mr. **LIEBERMAN**. That's correct.

Senator **HATCH**. And many times law clerks participate, in fact in almost all cases, in doing the research for each and every case, is that correct?

Mr. **LIEBERMAN**. At least research, yes.

Senator **HATCH**. And I suspect that most district judges, especially trial judges, rely rather heavily on the research of their law clerks.

Mr. **LIEBERMAN**. I think that's true, Senator.

Senator HATCH. Are you familiar with the fact that many law clerks actually help to write opinions for judges?

Mr. LIEBERMAN. I am, Senator.

Senator HATCH. As a matter of fact, their research in many cases is incorporated within the opinions that the judges write or may be published by the judges.

Mr. LIEBERMAN. Quite often.

Senator HATCH. I believe though it's fair to say that most judges who, in our Federal district courts and in our circuit courts of appeals, even though they rely rather heavily on the research of their law clerks, write the opinions themselves, or at least write an awful lot of their opinions, generally incorporating what the law clerks have in their research into their opinions.

Mr. LIEBERMAN. That's true, Senator.

Senator HATCH. Is that what you suspect was the case here?

Mr. LIEBERMAN. I think that Judge Claiborne in large part did rely on his law clerks along with the counsel briefing the cases for his knowledge in any particular area.

Senator HATCH. You personally know whether Judge Claiborne here, he had wide experience, as I understand it, in general criminal defense practice. But do you know what percentage of his practice was in criminal tax fraud cases?

Mr. LIEBERMAN. I was not in Las Vegas at the time, and this is basically talking to other lawyers there, is that his practice was generally centered in State court with murders and State court types of crime.

I know he did handle some Federal cases because I've come across them when I've cited the cases in the Federal Reporter. But Judge Claiborne's forte was a trial attorney and not a criminal tax attorney. That's for sure.

Senator HATCH. Well, you're a specialist in criminal tax laws.

Mr. LIEBERMAN. Yes.

Senator HATCH. And civil tax laws.

Mr. LIEBERMAN. Yes.

Senator HATCH. That's all I have to say.

The CHAIRMAN. That's all?

Senator HATCH. That's all.

The CHAIRMAN. Senator Sarbanes.

The VICE CHAIRMAN. Mr. Lierberman, how old are you?

Mr. LIEBERMAN. Thirty-four.

The VICE CHAIRMAN. And how old were you when you were educating Judge Claiborne on tax law?

Mr. LIEBERMAN. Probably about 30.

The VICE CHAIRMAN. And how many years had you been out of law school at the time?

Mr. LIEBERMAN. I had 3 years of experience, 2 to 3 years of experience in the Tax Division of the Department of Justice at that time doing civil tax litigation at various places around the country.

The VICE CHAIRMAN. So you had been out of law school less than 3 years?

Mr. LIEBERMAN. I got out of law school in August 1977 and appeared in front of Judge Claiborne from approximately the latter part of 1979 on.

The VICE CHAIRMAN. I see. Thank you.

The CHAIRMAN. No further questions. Thank you very much, Mr. Lieberman.

Mr. LIEBERMAN. Thank you, Senator.

The CHAIRMAN. Is there any further desire to hold this witness? Then he is excused.

Mr. GOODMAN. He may be excused as far as we are concerned, Mr. Chairman.

[Witness excused.]

The CHAIRMAN. We would now like to recall Mr. Watson to the chair.

Mr. Watson, you understand that the oath to tell the truth which you have taken previously is still binding upon you at this time?

Mr. WATSON. Yes, I do, Mr. Chairman.

Mr. Chairman, could I be allowed to make a brief statement?

The CHAIRMAN. Yes, we'll allow that.

Mr. WATSON. I have got most respect for this august group of people. For the past 4 years, I have devoted an enormous amount of time to participating in trials in the defense of Judge Claiborne who I believe was wrongly charged, wrongly convicted and now subject to impeachment.

The events of the last few days have caused me great concern. On Tuesday, Mr. Goodman informed you that I was the cause of Judge Claiborne's indictment. On Wednesday, Mr. Goodman stated I was nobody's witness. On Thursday, I observed both Mr. Goodman and Mr. Chabraja proceed to impeach my testimony. To compound matters, Senator Rudman explained that he had never heard such outrageous conflict of testimony. Today I've heard the description of Tweedle Dee and Tweedle Dum along with a witness trying to save his skin. And I still don't know whether or not I'm a target for the Federal grand jury.

What I regret is the fact that Judge Claiborne is innocent of willfully evading taxes in 1980. I discussed this with two IRS agents in 1983. The tax discrepancy could have been adjusted in an audit. The judge could have paid the tax instead of, as some say, going into this particular situation which I think has cost us $30 or $40 million.

I do not believe there is any fraud. I've never been coached as to my testimony in the 4-year period. I've only had the briefest encounters with Judge Claiborne and Oscar Goodman. I'm not privy to his strategy, and I don't know. I do observe that I believe he has now prejudiced me and reputed my status as a defense witness and impeached my testimony.

I have no one to rehabilitate my testimony if and when it's necessary. I don't consider myself any match for Mr. Goodman, Mr. Chabraja, and certainly not both at the same time.

I have been intimidated by Stephen Shaw of the IRS, the FBI, and now it appears by Mr. Goodman and Mr. Chabraja.

I would respectfully request that you would dismiss me from my subpoena at this time.

The CHAIRMAN. Mr. Watson, it's not possible for me to do that. We're engaged in a proceeding which is not pleasant for any of us. It's, I think, a painful process for everyone involved.

Mr. WATSON. Yes, sir, yes, it is.

The CHAIRMAN. Wherever they happen to be sitting.

Mr. WATSON. Mr. Chairman——

The CHAIRMAN. We all have our responsibilities and yours is to answer truthfully to the best of your knowledge about the facts as you know them, your responsibilities to respond to the questions. And it is my duty as chairman to insist that you do that.

Mr. WATSON. Mr. Chairman, my friend, Lawrence Semenza, was here yesterday as a witness. Mr. Semenza discussed this with me at great length last night, and told me it was his earnest belief, that he felt I should invoke my privilege under the fifth amendment.

The CHAIRMAN. Well, if you feel that any of the responses to questions that may be propounded to you would in fact incriminate you, then you have a constitutional right to invoke the privilege.

Mr. WATSON. Mr. Semenza——

The CHAIRMAN. But you cannot know that until the questions are propounded to you, so——

Mr. WATSON. Mr. Semenza was very strict, and we discussed it at some length, and I've agonized this problem all night long and I'm still agonizing with this problem. Mr. Semenza is reported to be an outstanding attorney. I think I would be foolish to go against his strenuous recommendation that I invoke my privilege.

The CHAIRMAN. You have a constitutional right to do that, but you can do it only when you are responding.

Senator RUDMAN. Mr. Chairman.

The CHAIRMAN. Yes?

Senator RUDMAN. Mr. Chairman, I just want to point out to the Chair, that in a trial practice, once a witness has testified as to a matter, he cannot selectively invoke the fifth amendment thereafter. No one is going to dispute that, and we are not bound by Federal rules of procedure, or any State procedure. But this gentleman has testified freely and fully, and now he wishes to invoke the fifth amendment after he has discussed these matters with the committee, and he wishes to do it selectively, and I respect the Chair's comment about his constitutional rights, but certainly, this selective invocation of the fifth amendment would be highly unusual in any other proceeding.

The CHAIRMAN. Well, the Chair would have to further observe that there is a question of the statute of limitations, and if in fact the questions which may be propounded would deal with matters which are barred, that that would be a question of whether or not the invocation of his rights would be appropriate.

So there are many questions involved here, and the only way we can test this is to go forward with the questions, and for that purpose—

Senator GORE. Mr. Chairman, without speaking to the point made by Senator Rudman, I would note that no statute would apply to charges of perjury which might subsequently be brought, based upon the witness' earlier testimony here.

The CHAIRMAN. I think the Senator is correct.

Senator RUDMAN. Mr. Chairman, I have a few questions for Mr. Watson. A very few.

The CHAIRMAN. Senator Rudman has asked to be—just one minute, please. There has been a request for a conference at this point, so if you will just stay right where you are, Mr. Watson.

Mr. WATSON. Yes. I will.

[Recess.].

The CHAIRMAN. The committee will come to order.

Mr. Watson, by your statement, you have clearly indicated that you wish to invoke the constitutional privilege.

Mr. WATSON. That's correct, sir.

The CHAIRMAN. You wish to avoid any self-incrimination as a result of testimony that you might give this afternoon?

Mr. WATSON. If that—if there were any possibility, of course I would.

The CHAIRMAN. Of course the privilege does exist. The Constitution does provide guarantees against self-incrimination, but that privilege can be invoked in accordance with certain rules and certain limitations, and we find ourselves in a position of some difficulty in pressing you at this time when your counsel is not present.

I think it is the feeling of every member of the committee, that you should have not only the advice of counsel, but that your counsel should be here. And we are not going to excuse you. We need your testimony. But we think you should get counsel and be prepared to testify. So you can step down from the chair at this time, but you are on notice that you may be recalled, if that becomes necessary before the end of this proceeding.

Mr. WATSON. Thank you.

The CHAIRMAN. And you are not to leave the city.

Mr. WATSON. Beg your pardon?

The CHAIRMAN. You are not to leave the city.

Mr. WATSON. I won't.

The CHAIRMAN. Mr. Goodman, will you call your next witness.

Mr. GOODMAN. Yes, Mr. Chairman. I call Judge Claiborne.

The CHAIRMAN. Will you raise your right hand.

Do you swear that the testimony you are about to give in this impeachment proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

Judge CLAIBORNE. I do.

DIRECT EXAMINATION

Mr. GOODMAN. Please state your name.

Judge CLAIBORNE. Harry E., Eugene Claiborne.

Mr. GOODMAN. Judge Claiborne, how old are you?

Judge CLAIBORNE. Sixty-nine.

Mr. GOODMAN. Where were you born?

Judge CLAIBORNE. In McRae, AR.

Mr. GOODMAN. Will you please tell the committee, generally, about your education.

Judge CLAIBORNE. I graduated from McRae High School in McRae, AR, attended Ouachita Baptist University in Arkadelphia, AR, for 3 years, and then went to Cumberland University School of Law in Lebanon, TN, where I graduated in 1941.

Mr. GOODMAN. Have you been in the service?

Judge CLAIBORNE. Yes. I have.

Mr. GOODMAN. What branch of the service?

Judge CLAIBORNE. I went into the, first, in the infantry in 1941, and, eventually, into the air force.

Mr. GOODMAN. All right. What years were you in the service?

Judge CLAIBORNE. 1941 through 1945.

Mr. GOODMAN. Where were you stationed?

Judge CLAIBORNE. I was stationed in the continental limits of the United States.

Mr. GOODMAN. After leaving the service, what form of employment did you assume?

Judge CLAIBORNE. I became a police officer in the Las Vegas police department. A patrolman.

Mr. GOODMAN. And how long did you remain in that capacity?

Judge CLAIBORNE. Approximately 2 years.

Mr. GOODMAN. Did there come a time that you took the Nevada bar?

Judge CLAIBORNE. Yes. I did. I was working as a police officer because I had to have a year's residence to take the bar examination, and so—before I could apply—so it was almost 2 years before I could accomplish both.

Mr. GOODMAN. When you passed the bar, what type of work did you assume?

Judge CLAIBORNE. I went into the district attorney's office in Las Vegas, NV, as a assistant district attorney.

Mr. GOODMAN. And what were your duties and responsibilities in that capacity?

Judge CLAIBORNE. Well, at first, it was the usual and ordinary duties that a young attorney performs in a district attorney's office. That is, small and unimportant cases in justice court, and municipal court.

Mr. GOODMAN. All right. And after a while, did the cases become more complex?

Judge CLAIBORNE. Oh, yes. I—not long afterwards, I was trying felony cases.

Mr. GOODMAN. All right. And how long did you remain in the district attorney's office?

Judge CLAIBORNE. I was there approximately 3 years.

Mr. GOODMAN. After you left the D.A.'s office, what did you do?

Judge CLAIBORNE. I ran for assemblyman of Clark County, NV, and that's why I resigned; so I could run for public office.

Mr. GOODMAN. Were you successful in your race?

Judge CLAIBORNE. Yes. I was successful. I won.

Mr. GOODMAN. All right. And you served as an assemblyman?

Judge CLAIBORNE. One term, and then I got ambitious and ran for the State senate, and the voters retired me.

Mr. GOODMAN. Did you then devote your entire time to the private practice of law?

Judge CLAIBORNE. That is correct.

Mr. GOODMAN. Will you tell this honorable committee what type of law practice you had over the years, and how it developed.

Judge CLAIBORNE. Well, I was a general practitioner. I handled everything. Las Vegas was a small city when I came there. You could not specialize or you would have starved to death. So you took everything.

Eventually, I decided I wanted to be a trial lawyer, and exclusively, and so I did it. I did it at a sacrifice of, in the beginning of—because there wasn't that much trial work. But eventually, I mean, it paid off for me.

Mr. GOODMAN. All right. And did you handle, as the years went on, high-profile cases?

Judge CLAIBORNE. I handled every type of civil and criminal case that you can imagine in the 30 some odd years that I was a lawyer.

Mr. GOODMAN. And did you represent high-profile clients?

Judge CLAIBORNE. Oh, yes. I did.

Mr. GOODMAN. Did you represent entertainers?

Judge CLAIBORNE. Oh, yes.

Mr. GOODMAN. And did you represent persons who were reputedly associated with organized crime?

Judge CLAIBORNE. Oh, yes.

Mr. GOODMAN. And did you represent persons who held high office in the gaming industry?

Judge CLAIBORNE. Yes.

Mr. GOODMAN. And did you represent politicians?

Judge CLAIBORNE. Yes.

Mr. GOODMAN. And along the way, how would you characterize your relationship with law enforcement?

Judge CLAIBORNE. Excellent.

Mr. GOODMAN. Were you respected by the local police authorities?

Judge CLAIBORNE. I didn't hear you.

Mr. GOODMAN. Were you respected by the local police authorities?

Judge CLAIBORNE. Well, I don't think that's for me to say but I think I was.

Mr. GOODMAN. Did you represent policemen?

Judge CLAIBORNE. Oh, yes, many, many of them. I had—they all knew, and I hadn't told all of them. I helped establish the police protective association in Las Vegas, I was instrumental in getting the first civil service bill passed in the legislature to give policemen and firemen civil service. I have been very close with the police department, and they are, I might say, one of my loves, and I represent any of them, and that—through the years, that needed my services, free of charge.

Mr. GOODMAN. Now, did there come a time when you were advised that you were being considered for an appointment to the position of U.S. district judge for the district of Nevada?

Judge CLAIBORNE. Yes.

Mr. GOODMAN. When was that?

Judge CLAIBORNE. April—I think about April 23, 1978.

Mr. GOODMAN. And how were you so advised?

Judge CLAIBORNE. By Senator Howard Cannon.

Mr. GOODMAN. Did you do anything in contemplation of the nomination being confirmed?

Judge CLAIBORNE. Well, I was investigated by the FBI.

Mr. GOODMAN. All right. And——

Judge CLAIBORNE. I began to go through the period that you're awaiting the eventual day when you're confirmed.

Mr. GOODMAN. Did you wind down your law practice?

Judge CLAIBORNE. Well, no, not at once because there's no assurance that you're going to be confirmed. And so I reduced my practice, however. I began to reduce it.

Mr. GOODMAN. When were you appointed?

Judge CLAIBORNE. August 9, 1978.

Mr. GOODMAN. And when were you sworn in?

Judge CLAIBORNE. September 1.

Mr. GOODMAN. Of 1978?

Judge CLAIBORNE. 1978. Yes.

Mr. GOODMAN. When you were a judge, initially, newly appointed, who was your tax preparer?

Judge CLAIBORNE. Jay Wright. Joseph Wright.

Mr. GOODMAN. How long had you known Jay Wright?

Judge CLAIBORNE. I knew him when I was in the service. I believe I first met him in 1940. It may have been 1942 or 1943.

Mr. GOODMAN. And what type of relationship was formed over the years with Mr. Wright?

Judge CLAIBORNE. A good relationship. We became friends.

Mr. GOODMAN. As far as the preparation of your taxes are concerned, could you describe how that was handled over the years with Mr. Wright.

Judge CLAIBORNE. Well, when he first became my accountant, I mean, we didn't have a system. Then that went on for a number of years. Of course you can understand, when I went in private practice the world wasn't exactly beating a path to my door, and so we didn't need too much of a system. But as the years went on and then my practice became good, and then we set up a system that stayed with us throughout the years.

Mr. GOODMAN. Did there come a time, Judge Claiborne, that you had an audit by the IRS?

Judge CLAIBORNE. I had two audits by the IRS, once right after I left the district attorney's office, and I believe one in, somewhere in the 1960's, latter 1960's—1965, 1966, 1967, in that period of time. I don't remember.

Mr. GOODMAN. What was the effect of the audit that you underwent in the 1960's?

Judge CLAIBORNE. That audit was devastating to me, personally, and to my practice.

Mr. GOODMAN. In what sense?

Judge CLAIBORNE. Because I was a sole practitioner, and the time that I took answering questions in going through that audit, almost destroyed my practice, if you want to know the truth.

Mr. GOODMAN. As a result of that audit——

Judge CLAIBORNE. That period of time I could do nothing. Every day they were in. Every day they had questions to ask. Every day there was a conference. And that went on for many, many, many days. I was—even though I was pleased with the outcome of the audit, we had to pay a few hundred dollars—I believe it was $671—I'm not sure—but I believe that was the total, in taxes, and I would have been happy to give them five times that amount, in the beginning, if they had not performed the audit, but that's not possible.

Mr. GOODMAN. As a result of the audit, did you have a discussion with Jay Wright about your taxes?

Judge CLAIBORNE. Mr. Wright and I talked about it. He knew my feelings about it. I told him, I said, "I never want to go through this as long as I live, again." And I said I—I don't care what it is, or what transaction, I said, is involved. I said if there's any question in your mind, I said I want it resolved in the favor of the Government. I don't want these arguments. I don't want to go through this thing. I don't want to sit hours at a time saying, "Here's a bill for $1.98. What did you buy with it and what'd you do for it?"

Mr. GOODMAN. Over the years, when Mr. Wright was your tax preparer, did you develop a pattern as to how the tax returns were going to be signed by you and sent into the Internal Revenue Service?

Judge CLAIBORNE. Yes.

Mr. GOODMAN. Would you please tell the committee about that pattern.

Judge CLAIBORNE. Our system was merely this. I mean, he would come in once a month into my office. He would pick up the following documents. He would pick up the bank, the checkstubs. He'd pick up the deposit book, a copy of the deposit book, and he would—and take them to his office. The check—my bank statements went directly to his office from, from a bank.

Mr. GOODMAN. And how were the returns prepared, if you know?

Judge CLAIBORNE. I didn't hear you.

Mr. GOODMAN. How were the returns prepared, if you know?

Judge CLAIBORNE. Well, he—we would—we had a system of writing each other notes through the years, you know, and I would get a note from him or a telephone call, and I would answer it generally by a note. Almost invariably by a note, in my own longhand, through the years, if he had any question about anything.

Many of—I think he had little notes that he used to write maybe during the month, and he would—because I have seen them when I was talking to him, and had access to my file and would look at them, I'd say little, I guess, 3 by 5 sheets of stationery with little notes to himself, like he was reminding himself what to ask me about certain items. And that's what he would, system he would follow. And I'd answer his questions. The end of the year, he would prepare my return. We had very few conferences about the return, and very little, practically no trouble with the return, ever.

Mr. GOODMAN. How did the signing of the return take place?

Judge CLAIBORNE. He would call me and tell me that my return was ready, and it was done in various ways. I'd either go by and get it, take it home, and I'd have my wife sign it, and bring it back, or mail it that night, if I didn't have time, if that was a deadline date. Otherwise, I'd return it to his office when we had both signed it, if it was ahead of time, which it very seldom was.

Sometimes, my wife would drop by and sign it, and I would sign it on my—in the afternoon. I would sign it on my way home. And most times he would mail it. Sometimes I, when I—when my wife and I signed it, I could—I would mail it many times. If it was—that's the system we—the system was no system.

Mr. GOODMAN. Was there ever a time that you signed returns in blank for Mr. Wright?

Judge CLAIBORNE. Yes. Many times.

Mr. GOODMAN. All right. Around the time that you became a judge, did you ever sign the return in blank?

Judge CLAIBORNE. Yes. I signed a return in blank in both years, 1978 and 1979.

Mr. GOODMAN. Why would you sign the return in blank in 1978?

Judge CLAIBORNE. In 1978 I was sitting in the Eastern District of Washington. I was trying a number of cases involving the Bonneville power project, and I was there on assignment to handle all of those cases. And it became close to the time when our extension was up, and so I, I went in and I got two blank 1040's and I signed them. I put them in an envelope and I mailed them to Mr. Wright in Las Vegas and told him I wouldn't be back in Las Vegas.

Mr. GOODMAN. In other words, you got these blank returns up in Washington and then——

Judge CLAIBORNE. That's correct.

Mr. GOODMAN [continuing]. Signed them, and mailed it to him?

Judge CLAIBORNE. It was mailed to his office.

Mr. GOODMAN. How about 1979?

Judge CLAIBORNE. 1979? The—you want the circumstances?

Mr. GOODMAN. Yes, please. That would be 1980, I guess, for the 1979 return.

Judge CLAIBORNE. 1979 return for 1980 would—on—once again we had received an extension. About May 1—and I believe it was May 1—I'm certain of that—Judge Browning called me, who was the chief judge of the Ninth Circuit Court of Appeals. He assigned me to Los Angeles to handle what I thought would be a long, protracted, large criminal case.

And I called Mr. Wright and I said it may well be I won't be back. I explained the circumstances, and he said, "Harry, we'll do it just like we did it last year." I first said, "Should we get another extension?" and he said, "It won't be necessary."

So I—he said we'll do it like we did last year, and I—this one I signed in his office. I went to his office and I signed it in blank.

Mr. GOODMAN. I would like to direct your attention to your perception of the Federal Government investigation of you after you became a Federal judge.

Did you have any feeling at that time, after September 1, 1978, that you were the subject of either strike force, or FBI, or IRS interest?

Judge CLAIBORNE. Oh, I knew I was.

Mr. CHABRAJA. Objection, Mr. Chairman. The question wishes to elicit feelings; it should not do that. It should elicit facts. In any event——

Mr. GOODMAN. Mr. Chairman, what this all—I submit one of the crucial issues that will have to be decided by the Senate is in fact the state of mind which is constituted by feelings, by thought process, by emotion. It goes to the very heart of the case.

The CHAIRMAN. Well, since Judge Claiborne is the impeached person, I think we need to exercise some discretion here, and allow some latitude. I think the question does go to the issue of intent, and we will let you go forward.

Mr. GOODMAN. Thank you. You say you know that you are under investigation. What do you mean by that?

Judge CLAIBORNE. Well, I knew I was under investigation. I, I stepped out of the elevator on the 8th of April 1980, and a young newspaper reporter walked up to me, and he said, "Judge, did you know that there's a grand jury meeting right at this very moment investigating you?" And I said no, I did not know that. And he said, "Well, that's the truth. They are." I said, "How would you know?" and he said, "I know."

And the following morning I read in the paper where the grand jury was investigating me, involving a private detective known as Eddie LaRue, and the allegations were that they had hired him to illegally wiretap some homes.

This went on, this investigation went on by the grand jury, I presume, for a year, year and a half, and it finally concluded with the indictment of Mr. LaRue on, I believe, five counts, none of which involved me.

I have always considered that the grand jury action, as far as I was concerned, was a ruse anyhow, and that they did not ask for, nor did they expect an indictment. And I was assured, and I'm satisfied in my own mind, it was to put the "hammer" on me, but it did not work.

Mr. GOODMAN. As of April 11, 1980, did you have any other suspicions that you were being followed, or being investigated by the Government?

Judge CLAIBORNE. I knew that I was under surveillance. I knew that I was being followed, as events of the last few days have established.

I knew that my friends were being questioned concerning me, and my lifestyle, and my history, and every conceivable thing. And of course I had known for a long time, and, frankly, misjudged that the head of the Las Vegas office of the Federal Bureau of Investigation, somehow, took a personal dislike to me. I think, even though he was a very ambitious man, and he came into Las Vegas with an idea of, as he said, "planting the American flag in the Nevada desert."

And I think that his idea of doing that was to get rid of a lot of people, and, unfortunately, for me, I was, I believe, foremost in his ambitious path.

And I think somewhere along the way, he recognized that he was going to have to deal with me in order to be able to accomplish the things he wanted.

But he didn't know me very well. So I think he, he misjudged situations with me. I think when he came there that he—that he heard that I was a, a criminal lawyer, and that I was. And that immediately, to them, I was a threat. But I have said this to everybody who would listen. If they will find two prosecutors in the Federal system, outside of the strike force, that will say that I ever was unfair to the Government, or that I was on the side of a defendant, then I'd resign tomorrow and they won't have to have these proceedings.

But it wasn't what was presently there that bothered them. It was what I think would be down the road in the future, from the number of public officials in—that they later began to try. And those cases were in the mill in some minor ABSCAM-type sting operations. I never considered that I was a threat to the FBI. That when I came down from Reno in 1979, already, the war had started between the Federal judges of Nevada and the strike force, and the strike force lawyers had hit Las Vegas in a very arrogant way. And of course the judges didn't like it.

And I think Judge Foley was the chief judge at that time, and a fine gentleman, and a mild-mannered man, but a man of a lot of courage and personal convictions. And he found out that they had caricatures of—on a bulletin board at their headquarters, displaying Judge Foley as a clown, and they didn't—had his—a clown with—a picture of Judge Foley on—it was on the head of the clown, and then some comments underneath it. The next picture was—I shouldn't say was a picture of me. It was a blank, and then they had some comments under the blank, "Harry Claiborne," and underneath it was some writing. Insulted me.

I thought I was a, I was at least entitled to a small clown suit rather than just a blank. Well, I think that precipitated most all of the trouble. Judge Foley ordered a marshal to go seize it and put it in the clerk's office, and they did. And before that, Judge Foley had refused to hear any applications for wiretaps, and he delegated me to hear all applications for wiretaps, and electronic surveillance, and which I was doing. And then he decided not to hear any further strike force cases himself, and he refused to do it, and issued an order to that effect. The strike force lawyers filed a—had a—as a result of that, had filed a—at some time before that, rather, had filed a motion in his court to disqualify him because of prejudice, and he refused to disqualify himself.

So then they filed a motion under actual bias, and it was heard by Judge Thompson, and Judge Thompson, in his opinion, threw a little additional fuel on the fire by referring to the chief counsel for the strike force as a schizophrenic.

And that was the atmosphere that was existing at that time, and the next thing I know, that I'm before the grand jury, investigation going on. I then, of course—it was instigated by the strike force. It did not start with the ethics department in the Justice Department.

The first lawyers that handled the grand jury investigation against me were strike force lawyers, Mr. Anderson and Mr. Huntington.

So, naturally, I decided to join Judge Foley and not hear any strike force cases myself. And so I issued an order to that effect.

By this time Judge Reed had been confirmed, was sitting in Reno, which left the only—one Federal judge in Nevada hearing strike force cases. It was not a good atmosphere, to say the least, and that was the atmosphere existing at the time of the 1979 return.

Mr. GOODMAN. That was the atmosphere existing on the first two——

Judge CLAIBORNE. And 1980 return.

Mr. GOODMAN. And it was the atmosphere which was existing around April 10, 1980, is that not correct?

Judge CLAIBORNE. That's correct.

Mr. GOODMAN. Did you get a phone call from Jay Wright around April 10, 1980?

Judge CLAIBORNE. Yes, I did.

Mr. GOODMAN. On what date?

Judge CLAIBORNE. It would have been the 10th of April.

Mr. GOODMAN. Did you get a phone call where he requested from you any information about your taxes?

Judge Claiborne. Yes. He said I want your W-2 and a check for $8,000. And he said we have to make application for an extension. I can't get your return ready in time. I said that's very well.

Mr. Goodman. And after you got the phone call, what did you do, if anything?

Judge Claiborne. Are you talking about that day?

Mr. Goodman. Yes.

Judge Claiborne. I didn't do anything that day.

Mr. Goodman. The next day what did you do?

Judge Claiborne. That's when I gave my attention to his request. And I got up in the morning, and I'm an early riser, and I had my cup of coffee. And I had moved from a home that I had lived in for 25 years in Las Vegas. And I went into the den of my new home, and I took the records of moneys that I had received from James Brown who was a young lawyer that had worked for me, and Ms. Annette Quintana. And I had records of those. I added them up to determine the amount that I had received from them in 1979—I mean 70—yeah, 1979.

And I sat down at the desk and I took a sheet of paper out of my drawer and I wrote him a note. I said finding those W-2 and check for $8,000 and the amount of my income.

Mr. Goodman. Could you show Judge Claiborne exhibit No. 36? Judge Claiborne, do you recognize exhibit No. 36?

Judge Claiborne. That's the letter.

Mr. Goodman. Is that in your hand?

Judge Claiborne. Yes, it is.

Mr. Goodman. Are you familiar with the written portion on the upper right-hand corner?

Judge Claiborne. "11-83 first shown to him"?

Mr. Goodman. Yes.

Judge Claiborne. I don't know. That was not on the letter. I believe this is a copy of some document that was a copy of the same letter received from the trial. That's all I could think of. I don't know. That note was not on there before.

Mr. Goodman. With the exception of the note in the upper right-hand corner, the rest is in your handwriting, is that correct?

Judge Claiborne. That's correct.

Mr. Goodman. And it was composed by you on April 11, 1980?

Judge Claiborne. That's correct.

Mr. Goodman. At this time we would move the admission of exhibit 36.

The Chairman. It will be accepted.

Mr. Goodman. Thank you.

[Whereupon, House manager exhibit No. 36 was received in evidence.]

Mr. Goodman. After you wrote the letter, Judge Claiborne, what did you do?

Judge Claiborne. I delivered the letter to my secretary and asked if she'd take it down to Mr. Wright's office.

Mr. Goodman. Did you ask her to do anything else?

Judge Claiborne. Well, I asked her to get the W-2 form out of the file, and I handed her the letter and the check, and I said get the W-2 out of the drawer and out of the files and take this down to Jay Wright.

Mr. Goodman. I'd like you to look at exhibit No. 3, please.

Judge Claiborne, before you has been placed a document marked proposed exhibit No 3.

Do you recognize that document?

Judge **Claiborne**. Yes, I do.

Mr. **Goodman**. Is that a check which you drew on April 11, 1980, in the amount of $8,000 to the Internal Revenue Service?

Judge **Claiborne**. It is.

Mr. **Goodman**. All right. Now, looking at the check, you'll see there is typed in SS No. 431-14-0100, and also in the lower left-hand typed in form 4868.

Did you type those on the check?

Judge **Claiborne**. No; I did not.

Mr. **Goodman**. Do you know who put those there?

Judge **Claiborne**. I presume Mr. Wright.

Mr. **Goodman**. But you yourself did not?

Judge **Claiborne**. No.

Mr. **Goodman**. The rest of the check is in your handwriting, is that correct?

Judge **Claiborne**. That's correct.

Mr. **Goodman**. And the check number is taken—the check was taken from a checkbook?

Judge **Claiborne**. That's right.

Mr. **Goodman**. And what is the check number?

Judge **Claiborne**. 0302

Mr. **Goodman**. 0302. All right.

Senator **Bingaman**. Mr Chairman, could you just specify which exhibit this is? I'm having trouble finding it.

Mr. **Goodman**. Yes. The exhibit is exhibit No. 3 of the respondent or the thinner folder.

Senator **Bingaman**. I guess I must have a defective copy of this. It's got Claiborne's exhibits 1 through 20, but we don't seem to have No. 3 in here. Oh, I see.

Senator **DeConcini**. They are in there separately.

Senator **Heflin**. It wasn't bound.

Senator **Bingaman**. OK. Thank you. I have it.

Mr. **Goodman**. So as I understand it, you gave Judy Ahlstrom the letter, the check, she had the W-2, and you had instructions for her to deliver it to Mr. Wright's office, correct?

Judge **Claiborne**. That is correct.

Mr. **Goodman**. And what was the purpose of the check again?

Judge **Claiborne**. It was for an extension in which to file form 1040.

Mr. **Goodman**. I'd like you to look at the House's exhibit No. 20 and ask whether or not you're able to relate that document to the letter and enclosure that you sent to Mr. Wright on April 11, 1980?

Judge **Claiborne**. Yes. It is the amount of paragraph 6, the $8,000 listed as balance due.

Mr. **Goodman**. All right. Now, does your signature appear on exhibit No. 20?

Judge **Claiborne**. No.

Mr. **Goodman**. Whose signature appears thereon?

Judge **Claiborne**. Mr. Wright

Mr. **Goodman**. If it is not yet admitted, Mr. Chairman, I would move for the admission of exhibit No. 20, and also exhibit No. 3.

The CHAIRMAN. Well, I'm advised that No. 20 has been admitted.

Mr. GOODMAN. All right.

The CHAIRMAN. 3 has not been.

Mr. GOODMAN. I would move the admission of the check identified by Judge Claiborne.

The CHAIRMAN. It's admitted

[Whereupon, Claiborne exhibit No. 3 was received in evidence.]

Mr. GOODMAN. Judge Claiborne, looking at exhibit No. 20, are you able to see whether or not there is a date opposite Mr. Wright's signature?

Judge CLAIBORNE. Yes.

Mr. GOODMAN. What is that date?

Judge CLAIBORNE. April 11, 1980.

Mr. GOODMAN. Later on, on April 11, 1980, did you have the occasion to speak to Mr. Joseph Wright?

Judge CLAIBORNE. When?

Mr. GOODMAN. On April 11, 1980.

Judge CLAIBORNE. Yes, I did.

Mr. GOODMAN. Would you tell this honorable committee how that came about?

Judge CLAIBORNE. About mid-afternoon of the same day, he called me and he said, on the telephone, and he said I need a check, another check for $2,500. And I said OK, what's this for? And he said it's on the estimate. I said I'll drop it by on my way home, which I did.

Mr. GOODMAN. Did you go into Mr. Wright's office?

Jugge CLAIBORNE. Yes, I did.

Mr. GOODMAN. What did you do when you got there?

Judge CLAIBORNE. Well, it was after work, and when I went in, the place was full of people. And, of course, this was a time close to the 15th, the filing time. And I waited a few minutes, and then I really didn't want to wait any longer, and I walked around a lady and I kind of gave him a signal. And he came out. And then he had someone with him, I don't know who it was. So he immediately called me and we went into his office and I signed the estimate.

Mr. GOODMAN. All right. Now, please look at proposed exhibit No. 28 for identification.

And while the clerk is bringing the material, would the clerk please bring with it proposed exhibit 29?

Mr. CHABRAJA. Mr. Chairman, I believe that Mr. Goodman is referring to House exhibits which are already in evidence.

Mr. GOODMAN. Exhibits 28 and 29.

The CHAIRMAN. That is correct.

Mr. GOODMAN. Judge Claiborne, would you take a look at 28 and tell us whether or not you recognize that document?

Judge CLAIBORNE. Yes.

Mr. GOODMAN. And what does it reflect?

Judge CLAIBORNE. That reflects payment on the estimate.

Mr. GOODMAN. In what amount?

Judge CLAIBORNE. $2,500.

Mr. GOODMAN. Did you sign it?

Judge CLAIBORNE. Yes.

Mr. GOODMAN. And did you sign it at Mr. Wright's?

Judge CLAIBORNE. Yes.

Mr. GOODMAN. All right. Please look at exhibit No. 29. Do you recognize that document?

Judge CLAIBORNE. Yes.

Mr. GOODMAN. What is that?

Judge CLAIBORNE. That's a check for $2,500 to Internal Revenue Service on the estimate.

Mr. GOODMAN. Who drafted the check? Who drew it?

Judge CLAIBORNE. I did.

Mr. GOODMAN. Is it your handwriting on it?

Judge CLAIBORNE. Yes.

Mr. GOODMAN. There's typing on it?

Judge CLAIBORNE. Yes.

Mr. GOODMAN. Did you type that material on the check?

Judge CLAIBORNE. No. That's—typewritten on it is my Social Security number and form 1040-ES.

Mr. GOODMAN. And the check is dated when?

Judge CLAIBORNE. April 11, 1980.

Mr. GOODMAN. And what is the numerical number from your checking account?

Judge CLAIBORNE. 0303.

Mr. GOODMAN. 0303 was the next check in the checkbook after you wrote the $8,000 check earlier that day?

Judge CLAIBORNE. In numerical order, yes.

Mr. GOODMAN. All right.

Could you please show Judge Claiborne exhibit No. 15?

Judge Claiborne, you have been shown exhibit No. 15. Do you recognize that document?

Judge CLAIBORNE. Yes, I do.

Mr. GOODMAN. What is it?

Judge CLAIBORNE. It's a W-2 form.

Mr. GOODMAN. Is there more than one document in 15?

Judge CLAIBORNE. My Internal Revenue 1040 for 1979.

Mr. GOODMAN. All right. And I ask you to look at the second page and see whether your signature appears thereon.

Judge CLAIBORNE. Yes.

Mr. GOODMAN. And is there a date placed thereon by yourself?

Judge CLAIBORNE. 6-15.

Mr. GOODMAN. Did you, in fact sign that return on 6-15?

Judge CLAIBORNE. No. 6-15 was put on the blank because that would have been the last day of the extension. When I signed it in blank, I did not know that the 15th was a holiday or Sunday, whatever it might have been. A holiday I believe. And, of course, you'd have the next day in which to file.

Mr. GOODMAN. Did you ever see the completed 1979 return before it was filed?

Judge CLAIBORNE. No.

Mr. GOODMAN. Did Jay Wright discuss with you the figures in the return before it was signed?

Judge CLAIBORNE. No.

Mr. GOODMAN. When you had your 1979 tax return filed, did you have any idea that the legal fees which you had received from Annette Quintana and James Brown weren't all reported?

Judge CLAIBORNE. No.

Mr. GOODMAN. I'd like you to look at exhibit No. 21.

Judge CLAIBORNE. Do I have it?

Mr. GOODMAN. You don't have it, Judge. I'll bring it to you.

Yes, House exhibit 21.

Do you recognize that?

Judge CLAIBORNE. Yes, I do.

Mr. GOODMAN. Is that in your handwriting?

Judge CLAIBORNE. Yes, it is.

Mr. GOODMAN. In exhibit No. 21, there appears to be a notation, a private law practice before judgeship with the figure 22,332.87.

How do you account for that?

Judge CLAIBORNE. How do I account for it?

Mr. GOODMAN. Yes, sir.

Judge CLAIBORNE. Well, it's a writing that I prepared on May 1 in answer to a request of Mr. Wright's. On May 1, I called him to advise him that I was being assigned in Los Angeles. So later on during the day, he called me up and asked me some questions and said he wanted this information, and so I gave it to him.

Mr. GOODMAN. Was the figure 22,332.87 provided by you to Mr. Wright?

Judge CLAIBORNE. No, it was not.

Mr. GOODMAN. How did that figure get on this piece of paper?

Judge CLAIBORNE. He said before you leave, he said I—he first said when are you leaving, and I said I believe I left it was the 6th, I'm not sure. And he said that's good, it'll give us a little time if anything comes up in the meantime where I need more information. He said right now, he said I'd like the following. And I said all right.

And so I took a legal pad, a legal tablet, and I said what do you want? And he started out by saying I want your—first he said your earnings as a Federal judge. And I said, Jay, we gave you the W-2. He said, oh, yeah. He said all right, he said, and he gave me the amount, 54,499. He said that, and I wrote a note to that effect.

And he said I want your outside earnings, outside income. And I said what do you mean, outside income? Are you talking about interest income? He said no, I'm talking about any income other than interest income and your salary. And I said, Jay, I said I gave that to you already. And he said in a letter, he said, oh. He said, well, yeah, just a minute. And then he said yeah, 22,332.87 And I wrote it down.

Then he said I want your interest income and insurance and all of the things that are listed here, donations and medical expenses and real property taxes, and those things.

And I wrote the note down just what I had to furnish him. And that night, I took—I know I worked on it that very night. That's why I know it was the night of May 1 I did it. And I got all of the information together for him. And then I sat down with a legal tablet and I wrote out, starting with the very top, the whole thing, and then took and xeroxed it and put it in my disclosure file for the Ethics Committee. And I did that because I wanted the whole thing when I filled out my disclosure form, I wouldn't have to duplicate the work.

And that's actually why I wrote down the salary and the amount of private practice, the whole thing.

Mr. GOODMAN. Did there come a time, Judge, when you asked Mr. Wright to write letters to various mortgage companies in town for you?

Judge CLAIBORNE. Yes. I think the first time that I requested was in February of that year.

Mr. GOODMAN. All right. Could you please show Judge Claiborne exhibit No. 18?

Judge Claiborne, you have before you exhibit 18-A, which purports to be a document written by Joseph Wright, to the Stanwell Mortgage Co., dated March 7, 1980. Correct?

Judge CLAIBORNE. That is correct.

Mr. GOODMAN. All right. And it has in the third paragraph—and the document is in evidence—and I quote: "His earnings from the private practice of law for the year 1979 was $45,371.93."

Judge CLAIBORNE. Yes.

Mr. GOODMAN. Is that the same figure which you provided to Mr. Wright by way of your letter of April 11, 1980?

Judge CLAIBORNE. No. This some $4,000 higher.

Mr. GOODMAN. Do you know how, if you have personal knowledge as to how Mr. Wright arrived at the figure of $45,371.93?

Judge CLAIBORNE. Oh, yes. I gave it to him.

Mr. GOODMAN. And from where did you get that figure?

Judge CLAIBORNE. I took that figure from my bank statement and provided it to Mr. Wright, that is correct.

Mr. GOODMAN. At or about the time that you asked him to write the letter?

Judge CLAIBORNE. That is correct.

Mr. GOODMAN. Could you please show Judge Claiborne exhibit No. 19?

Do you recognize that document, Judge Claiborne?

Judge CLAIBORNE. Yes, I do.

Mr. GOODMAN. What is that?

Judge CLAIBORNE. That is a working sheet of Mr. Wright's.

Mr. GOODMAN. Does your writing or numerology appear on that particular exhibit?

Judge CLAIBORNE. None whatsoever. None. No.

Are you asking me did I write any part of this? The answer is no.

Mr. GOODMAN. OK. I would like you to look at exhibit No. 17, please. You don't have that yet—17.

Judge Claiborne, do you have No. 17 in front of you?

Judge CLAIBORNE. That is correct.

Mr. GOODMAN. What is exhibit No. 17?

Judge CLAIBORNE. It is a letter that I wrote in longhand, as was customary, to Mr. Wright.

Mr. GOODMAN. For what purpose?

Judge CLAIBORNE. To secure bank loans. I needed a declaration of what my income from private practice was.

Mr. GOODMAN. All right.

Judge CLAIBORNE. For the years 1978, 1979 and 1980.

Mr. GOODMAN. And did you provide him with certain information?

Judge CLAIBORNE. I sure did.

Mr. GOODMAN. What did you provide him?

Judge CLAIBORNE. A list of bank deposits for 1979 in the amount of—what I had on here was $46,371.93; and a list of deposits for 1980 in the amount of $41,000.

Mr. GOODMAN. Now where did you get those figures?

Judge CLAIBORNE. Off of my bank statement.

Mr. GOODMAN. And you provided them to Mr. Wright?

Judge CLAIBORNE. That is correct.

Mr. GOODMAN. Did you have a subsequent conversation with Mr. Wright about that document?

Judge CLAIBORNE. Yes, I did.

Mr. GOODMAN. When did that take place?

Judge CLAIBORNE. I don't know.

Mr. GOODMAN. How did it take place?

Judge CLAIBORNE. I was asked to call him by my secretary. She personally told me. I either had come off of the bench or come back from lunch, I don't know which, and she said Mr. Wright wanted to talk to me, and I called him.

And he said: "I want to talk to you about an item of February 2, 1979." And I said, "Yeah."

He said: "20,622, 17." And he said: "Do you know what that is?"

And I said: "No."

He said: "Well," he said, "I have it as a fee."

He did not say you have given it to me as a fee. He said: "I have it as a fee."

He said: "Will you check on that and let me know?" Then he said: "I know that"—no. He said: "I had some trouble from some other figures, but," he said, "I have got that straightened out." He said: "I know what that is."

That is what he said.

And I went and I found out that the deposit of $20,000 I checked on was a withdrawal of a TCD, and this is why this is crazy. I don't understand his figures of interest, $10,000 fee, and so forth, on this notation.

Mr. GOODMAN. Are you able to identify any of the other notations made by Mr. Wright?

Judge CLAIBORNE. Yes. On the right-hand side of the amounts he wrote in brackets, from the TCD, that I told him about. He wrote, $10,622.17, and then $10,000 of that he said was fee, and then $11,000—the next item was a sale of airplanes, and the next item was fees, and then the interest fee, and then interest, in his handwriting.

Mr. GOODMAN. Did you provide any of that information to him?

Judge CLAIBORNE. No. I did not.

Mr. GOODMAN. I would like to call your attention now to the filing of your 1980 tax return. Did you have Mr. Wright prepare that tax return, Judge Claiborne?

Judge CLAIBORNE. No. I did not.

Mr. GOODMAN. Who prepared it?

Judge CLAIBORNE. Mr. Watson.

Mr. GOODMAN. Why did you change after many, many years of service by Mr. Wright from his services over to Mr. Watson?

Judge CLAIBORNE. Why did I change?

Mr. GOODMAN. Yes, sir.

Judge CLAIBORNE. I have been asked that a number of times, and, you know, the Government seems to make that a large issue for some reason or another.

I quit him. I intended to quit in 1978, and I told him so. And when I, the day before I took the bench I told him. I said, I don't need a bookkeeper any longer, an accountant. I am not going to be in business. I said, I don't need your services but I do—after this year. Because I do want you to finish the year because you have all the records and you have gone this far. But I said, then next year all I will need you is as a tax preparer. He knew that.

So the next year I went to him, and, I don't know, I felt funny. I had—I am not a pompous individual. And I enjoy privacy probably more than people would ever believe.

But I just felt the next year that he didn't—he no longer cared. That is what I sensed, you know. For the first time in our relationship, that he was brusque with me, you know. It was always: Hi, Harry. How are you? And how is things? And how is your kids? And we know each other's kids by name. And chat and visit. And he was cold.

I just figured well, you know, he needed me like he needed another head. And that is the truth, he didn't need me. He had a large business. And I felt that I was imposing on him.

And I did not go look for another accountant.

Mr. GOODMAN. Well, how did you happen to get to Mr. Watson?

Judge CLAIBORNE. I was with my ex-wife, right close to the first of the year of 1981. Right near New Years, I know it was very close. It might have been 2 or 3 days before or 2 or 3 days after the first of the year. I believe it was after the first of the year.

And I was with her, and we were on our way to look at some furniture that she wished to look at. And I told her I would drive her.

And she said, I have to drop off some papers at my accountant's office. She didn't say whom. And she told me the directions, and I went there, drove there. And she got out, and she went upstairs. And she came back in a few minutes, and she said, "Mr. Watson wants to meet you. Would you mind?"

I said, no. And then I said, is that your accountant? And she said, yes.

So I got out of the car and we went upstairs, and went into his office. And immediately when I walked inside I recognized him. I knew that—I recognized him from my church. I had not formally met him at church, but I had seen him there on several occasions. And immediately that is the first thing that registered with him, I have seen this fellow at First Southern Baptist.

And I said, I have seen you in my church. And he smiled and said, yes. I shook hands with him. He invited us to sit down, and we began to talk.

During my conversation with him about a number of things, the phone rang. And this phone call is what sold me. I listened to the way that he answered the questions of the man on the phone.

And I knew that it was—from the answers to the questions, it was somebody with a tax problem, somebody who wanted to know what they should do.

The professionalism with which he answered the telephone call and he dealt with his client sold me. And I immediately thought, this is the man I want to do, have do my return.

Mr. GOODMAN. Did you have any discussions with him about providing him with information concerning the preparation of your return?

Judge CLAIBORNE. At that time?

Mr. GOODMAN. Yes.

Judge CLAIBORNE. No, sir. None whatsoever. It was just a social visit. After he made the phone call, we talked about a variety of subjects. I brought up that I was now living on the east side of town and it was the first time in 25 years, and that I felt I—I thought I would not be able to tolerate the noise, it was noisier than where I was used to being, and things of that kind. Nothing, absolutely nothing.

It was some time later that I decided to—I wanted to move from the new house that I had just moved into, and I called him up and asked him if I could see him. And he said yes, so I went down to see him.

And I said, I have a question. And I said, I know that I am entitled to deduct the cost of a new house, I said, from the sale price of my old home. And I said, is there—I said, I would like to shop for a house.

And I said, I——

The CHAIRMAN. Would you please repeat that?

Judge CLAIBORNE. I said, I would like to move from the house I am in. All right? And I said, would it in any way affect my taxes?

So then we started talking. This is somewhere in February 1981.

Mr. GOODMAN. Did he ask you to provide him with any information as a result of your conversations?

Judge CLAIBORNE. He told me that—at that time, no. I told him about—he said, well, I have to know something more about it. And I told him about the sale of my house. I told him about buying the property over on Pinehurst, and so forth and so on.

And he finally told me that—answered my question. And I got a letter from him then in April. And I had put off and had not retained an accountant anywhere, and his letter came on April 6, which reminded me that I was shortly running out of time and I am sure I would have to get another extension.

Mr. GOODMAN. Would you be kind enough to show Judge Claiborne exhibit No. 31? House exhibit 31.

You have exhibit No. 31 in front of you, Judge.

Judge CLAIBORNE. That is correct.

Mr. GOODMAN. Is that the letter that you received from Mr. Watson?

Judge CLAIBORNE. Yes.

Mr. GOODMAN. And after receiving that letter, what did you do, if anything?

Judge CLAIBORNE. When I received this letter I started immediately—I think when I received the letter I called him and verified that I had received the letter and that I did want him to do my return. And I began to get all the information together.

He made reference, I believe, to the form. He said, attached is a form. There was no form. And I asked him what he was talking about, and he tried to explain it to me. And I said, is it really necessary or can I make my own list? He said, make your own list. And I said, fine.

And that really is the reason for, I believe, exhibit 10.

Mr. GOODMAN. All right. Could you please show Judge Claiborne exhibit 10?

Judge CLAIBORNE. Well, this is not what I am talking about. No, it is a yellow——

Mr. GOODMAN. It is exhibit 10, but it is Judge Claiborne's exhibit 10.

Mr. GOODMAN. Do you have it in front of you?

Judge CLAIBORNE. Yes. I do.

Mr. GOODMAN. May I approach the easel.

The CHAIRMAN. Yes, certainly, Mr. Goodman.

Mr. GOODMAN. Of how many pages does exhibit 10 consist, Judge Claiborne?

Senator DECONCINI. Repeat the question, please.

Mr. GOODMAN. Yes. How many pages are in exhibit 10?

Judge CLAIBORNE. Six.

Mr. GOODMAN. Does your handwriting appear on all six pages?

Judge CLAIBORNE. I'm sure it does. Yes.

Mr. GOODMAN. Are there other persons' handwriting, or printing, on the entirety of the exhibit?

Judge CLAIBORNE. Yes.

Mr. GOODMAN. Do you know whose handwriting appears thereon, from your own personal knowledge?

Judge CLAIBORNE. Are you talking about the handwriting or the printing?

Mr. GOODMAN. Well, let's start with the first page of exhibit 10. Is that the page that has at its top, 1980, with the word, "income"?

Judge CLAIBORNE. That's correct.

Mr. GOODMAN. Did you write in everything on this entire page?

Judge CLAIBORNE. Yes, sir. Yes.

Mr. GOODMAN. Did you write item 5?

Judge CLAIBORNE. No.

Mr. GOODMAN. Did you write item 6?

Judge CLAIBORNE. No.

Mr. GOODMAN. Did you make these little drawings that appear to be in the lower one-third of the exhibit?

Judge CLAIBORNE. Not the top ones. The bottom one I did. I'm the artist of that.

Mr. GOODMAN. Would that be the, what I am pointing at?

Judge CLAIBORNE. Yes.

Mr. GOODMAN. What is this supposed to depict?

Judge CLAIBORNE. I had difficulty getting Mr. Watson to understand what I was talking about. I had——

The CHAIRMAN. Judge, would you be sure that the microphone is as close to you as possible. You can move the microphone. Some of the members are having difficulty in hearing.

Judge CLAIBORNE. All right, sir. Yes.

I—it's rather awkward. I don't know what your question was, now.

Mr. GOODMAN. Well, my question was, What are these little doodles supposed to depict?

Judge CLAIBORNE. We were talking about, about the property on 500 Rancho Road that I had sold, and he was—he said—it's rather childish when I read about it in, in the transcripts, but it is what occurred. We, we could not understand each other, what we were talking about. I was trying to explain to him—I had explained to him that there was two tracts, and—and three lots, what I was trying to say, and then which was not accurate, and I kept saying two tracts and three lots, and—and he first—he said, "You had two pieces of property, is that right?" and I—"with a piece of property between the two?" and I said no.

And he said, "You had two adjoining each other?" and I said no, and I finally took the pen out of his hand, and I drew the diagram of the whole place out for him, and except that circle from—I guess it would put the east property line to the—I mean, the south property line to the north property line, and that's, that's his handiwork over——

Mr. GOODMAN. Do you know who wrote the material which is in 5 and 6?

Judge CLAIBORNE. Other than her testimony here, I do not know.

Mr. GOODMAN. All right. You heard the testimony of Charlotte Travagli; is that correct?

Judge CLAIBORNE. That's correct.

Mr. GOODMAN. And she——

Judge CLAIBORNE. But I do not know that. I do not recognize her handwriting. I never did.

Mr. GOODMAN. All right. Had you ever spoken to Charlotte Travaglia regarding the preparation of your tax return?

Judge CLAIBORNE. No. The only time I ever saw this lady was after I was convicted.

Mr. GOODMAN. Did you ever——

Judge CLAIBORNE. And I, I went to her home, and I said, "I'm in search of the truth. I, I want to find out what in the hell did you people do to my return. Will you tell me what happened. I want the truth from somebody."

Mr. GOODMAN. That was the first——

Judge CLAIBORNE. And she sat down in her living room, and she told me the same things she's told me here. That's the first time I had seen her in my whole life.

Mr. GOODMAN. Did Jerry Watson ever suggest to you, that you should contact Charlotte Travaglia to find out how the preparation of your return——

Judge CLAIBORNE. No, absolutely not.

Mr. GOODMAN. Had you ever heard the name, Charlotte Travaglia, from Jerry Watson, at the time that you believed your return was being prepared?

Judge CLAIBORNE. Yes; I did. When I first, when I first talked to him, he told me, he said I have two accountants working for me. One is a CPA—formerly a CPA in Arizona, and the other is a very fine accountant who principally works on large business accounts. And he said it will probably be the accountant that—from—was a CPA in Arizona, that will do your work. But he said, "I will personally—I promise you, Judge, I will personally supervise it myself." "But as far as the workup, she will do it." And I said, "Well, I understand how that works," and, of course, I did.

Mr. **Goodman**. When you composed the first page of exhibit No. 10, did you place the asterisk next to the $88,500?

Judge **Claiborne**. Oh, no. No.

Mr. **Goodman**. You did not do that?

Judge **Claiborne**. No. I did not.

Mr. **Goodman**. Did you write in the $88,500?

Judge **Claiborne**. Yes. I did.

Mr. **Goodman**. Now, Judge, after the investigation began and exhibit No. 10 was provided to the Federal authorities, do you know whether or not it was subjected to testing, to determine whether or not the document was as it purported to be, as far as the writing and the ink, and the time of origination?

Judge **Claiborne**. Now you want the whole sequence of events as far as this document's concerned?

Mr. **Goodman**. I think it is important, yes.

Judge **Claiborne**. Mr. Watson came back from Reno, testifying before the grand jury in Reno, and he called me on the phone, and he said, "Judge, they're investigating you practicing law while you're a judge." And he said—I said, "Well," I said, "that's good." And I looked back. I had nothing to be amused about, but I made a smart remark, and I said, "If you're going to be accused of something, it might as well be—it's best to be something that you're 100 percent sure that you didn't do." And he accepted what I said. Rather, he said, as not being a joke, and he said, "This is, is not funny." He said, "That's what they examined me about."

I said, "Mr. Watson," I said, well—by this time I'm calling him Jerry, and I said, "Jerry, come on up to the, to my chambers and tell me about it."

And he did. And he told me—I'm wrong. He did not come to my chambers. I talked to him on the telephone, when I said this, and he said—I said, "What did—what makes you say this?" And he said, "Well," he said, "you know," he said, "they kept asking me about legal fees, legal fees." And then I knew. I said, "What about legal fees?"

He said, "Well, they asked me about if you declared your legal fees to me." And I had a rather sinking feeling that I was going to get an answer that I wasn't going to like, and I said, "What did you tell them?"

And he said, "Well, I told them that I didn't know anything about any legal fees." And I said, "Jerry, you have just indicted me." I said, "You get up to this office right now. I want the full story."

And so he came up to my office, and we sat down, and I began to question him about what his testimony was. The Government calls it debriefing. So, using the Government term, I debriefed Mr. Watson fairly well, and I found out that they had inquired about item 2, which I had given him, and he had denied any legal fees.

And I said, "I cannot tell you what to do because of my position in this matter," but I said, "I'll tell you what you should do." I said, "You should straighten it out with the grand jury because it isn't true."

And I said, "I want right now, and you to get in my automobile with me and drive to my home. I've got something I want to show you."

And I took him out of the courthouse, and I drove to my home, and I went in, and I got all of my papers, which were in the dining room, and I found copies of this document, which I had furnished him. And I said, "Ever see this before?" He said, "Well, sure."

So, I looked at Charlotte Travaglia's writing, and I said, "Whose writing is this? Is this yours?" And he said, "No. Charlotte's." And I said, "Who the hell is Charlotte?" And he said, "The accountant who did the work on your return."

So I took the document—it was six pages—back to my office with him. I went in and I xeroxed them, and I gave them to him.

And I said, "My advice to you is to hire an attorney because once you begin to retract your testimony with the Government, you've got a big problem." And I said, "You'd better hire a lawyer." And I said, "And have him notify the grand jury of your error." And he said, "I will do that." And he did. And the reason I took him straight to my house that day: I didn't want anybody to be able to say there was any space of time between the time we talked about it, and his seeing the document.

And I, that night, saw a friend of mine, and I am very worried. I know what is coming, and I knew it was here, and I told him, I said, "Well, something happened today that has made what I thought never would be possible true."

And I said, "Old friend, I predict it right now," and I told him the full story. And he said, "I have friends, as you well know, who are FBI agents," and he said, "I want you to show me that sheet." And I did. I took him and I showed him the top page, and it became known to the FBI and my lawyers and myself as the yellow sheet, because they just took one page of it.

And he took the yellow sheet and he—the first page of exhibit 10, and he showed it to a friend of his who was Special Agent James Perry of the FBI, and who was the head investigator in this case.

And Perry said, "Well, we want to talk to the judge about it." So we set up a meeting at my friend's house. And so I—my friend produced the exhibit a second time, and they wanted me to give them, him permission to give the FBI the original. I said, "No, I'm not quite ready to do that." I said, "I don't really trust you." And I said, "I've seen too many documents mutilated, and you people always say the same thing. The examiner did it in the course of scientific tests, and the probative value of the document's destroyed."

"And you make a guessing game of the document," I said, "before the jury and everybody else." And I said, "It's not going to happen in this case. You're free to take a copy." "But that's as far as you go."

"You're free to look at it and make any examinations you want." And so they would be convinced, it was the same document, later on, that they first saw there. They initialed it with their own handwritings on the—their own initials on the back of it.

And sure enough, Mr. Skelton filed an affidavit with the court, that this document was false, and believes to be false, by him.

And they filed it with Judge Hoffman, and asked for scientific tests, and a scientific test was performed. And after it was performed, the Government lawyer, in my presence, walked up to Mr.

Goodman and he said, "We have no objection as to genuineness and authenticity of that document."

And the expert went on his way, and the document was finally exhibited, introduced in the court as an exhibit. That's the history of that sheet.

Mr. GOODMAN. Thank you. Now, Judge, you have told us that you provided Mr. Watson with exhibit No. 10 and those yellow pieces of paper when you were responding to his letter.

Did you also send any other papers to him?

Judge CLAIBORNE. I took him everything in that letter that he requested. Everything. I took all of the sales—the escrow instructions, the sales agreements, trust deeds, and the promissory note from the sale of the property, to him. Along with these documents I took with him all the records supporting improvements that I could find. I took contractors' agreements. Blank—I mean, canceled checks. Bills and invoices for things that I could not establish by check, and it was a stack of—it was in a box this high, what I took him, and it took me a long time to do it.

And while I'm in—and when I started doing it, well, I called him and I told him I cannot do this, get this done by the 15th.

I said it's a bigger job than I thought it was going to be.

He asked me for my income tax returns from 1973 up to 1979, and I said, why would you need my income tax returns for that far back, Mr. Watson? And he said, well, he said, it happens. He said, I couldn't possibly make out your 1980 income tax return without having the 1979 and the 1978 in my possession. He said, every income tax you prepare runs you back into the prior year. He said, there is absolutely no way you can avoid it.

And I could understand that. That made a lot of sense to me. It sounded reasonable, let's put it that way.

And I said, yes, I said, but I don't understand the 1973. I don't see how anything in 1973 on my tax returns could be pertinent, I said, to 1980.

And he said, well, I don't know that, but I want to review it and see it. And I said, very well, you will have it. So I took the whole caboodle of them, 1973 through 1979, to him. I gave him every single thing that he asked for.

Mr. GOODMAN. Did you file an application for automatic extension for the year 1980, and 1981?

Judge CLAIBORNE. I did not. I signed one, but I did not prepare it.

Mr. GOODMAN. Oh. Who prepared it?

Judge CLAIBORNE. Mr. Watson prepared it.

Mr. GOODMAN. Could the judge see exhibit 32, please? Thank you.

You have before you, Judge, exhibit No. 32. Is that an application for automatic extension of time?

Judge CLAIBORNE. It is.

Mr. GOODMAN. Is your signature on the document?

Judge CLAIBORNE. Yes; it is.

Mr. GOODMAN. Is it dated?

Judge CLAIBORNE. Yes. April 13, 1981.

Mr. GOODMAN. Is that the date that you signed it?

Judge CLAIBORNE. Yes.

Mr. GOODMAN. Who prepared the document?

Judge CLAIBORNE. Well, Mr. Watson obviously prepared it, because I didn't prepare it, and I went into his office, and he handed it to me and I signed it.

Mr. GOODMAN. And as a result of signing the document, did you write a check to the Internal Revenue Service?

Judge CLAIBORNE. I sure did.

Mr. GOODMAN. For how much money?

Judge CLAIBORNE. $20,817.59.

Mr. GOODMAN. And you gave that to Mr. Watson to send in with the application?

Judge CLAIBORNE. I did.

Mr. GOODMAN. Then there came a time that you found out that you were being requested to sign your, what you believed to be your tax return; is that correct?

Judge CLAIBORNE. Yes. There came a time when he called me and said that my tax return was ready; that it would be ready that next day.

Mr. GOODMAN. And what did you do as a result of that phone call?

Judge CLAIBORNE. I went to his office the next day at noon per arrangement. I said I will be there at noon tomorrow.

Mr. GOODMAN. What happened when you got to his office?

Judge CLAIBORNE. He was not there.

Mr. GOODMAN. Were you given what purports to be the return?

Judge CLAIBORNE. A lady in his office—there was nobody on the desk. There always was, when I was in there before there was a receptionist, and there was nobody there when I walked in.

And I walked by her desk and then I went right straight into Mr. Watson's office, and it was empty; he was not there. And I walked out of his office, and I was standing in the hallway, and a lady said to me, Judge Claiborne? And I said yes.

And she said, your return, just a minute. And she walked behind me, but I don't know where she went. It was just a very short period of time. And she come back around in front of me and she had the returns in her hand. She went in and put them on Mr. Watson's desk. They were loose, and more documents than the return and schedules.

But there was a paper clip on page—the signature page. Page 2 of the return itself, a paper clip on that side. And I took my pen out, and I turned to page 2 and I signed it.

And I thumbed through it, like this. And I said, will you ask him to mail me a copy? And I walked out.

Mr. GOODMAN. Did anything unusual register as far as the return being in pencil.

Judge CLAIBORNE. I hate to say this, but I really, I really—I really don't believe I had any impression at that time of the pencil.

He brought me the return to my office 3 days later.

Mr. GOODMAN. The original return?

Judge CLAIBORNE. No. I am talking about my copy of the return.

Mr. GOODMAN. All right. He came to your office?

Judge CLAIBORNE. Yes, with it 3 days later with the bill.

Mr. GOODMAN. How much was the bill?

Judge CLAIBORNE. $1,800. I had paid him $200 as a retainer.

Mr. GOODMAN. Paid him $200 when you first hired him?

Judge **Claiborne**. That is correct.

Mr. **Goodman**. Did you pay him by cash, or check?

Judge **Claiborne**. Check.

Mr. **Goodman**. All right. And as far as the $1,800, did you pay him by cash or check?

Judge **Claiborne**. I paid him by check.

Mr. **Goodman**. Did you think the bill was high compared to what you were used to paying?

Judge **Claiborne**. Yes; I did.

Mr. **Goodman**. Did you say anything to him about it?

Judge **Claiborne**. No; I did not. I, for just a minute I considered what to do, you know? He came into the office with his partner. The first and last time I had ever seen his partner.

Mr. **Goodman**. Is that Miss Lamb?

Judge **Claiborne**. Linda Lamb. He introduced her. And he sat down and handed me the return, but not the bill first. And he said, did you have an opportunity to go over your return? And I said, no, I did not. I said, I was caught in the traffic on the way to your place, and I said, I arrived late. I guess you gave me up.

He said, no. He said, I had a meeting I had to go to. And I said, well, I am glad of that. And I said, I signed it. I looked at it, is what I told him. I did not say, thumbed through it, but I did say I had looked at, is what I said.

And I have got it in my hand. Then, and this is my impression: that is the first time that I really had an impression that the whole return or a lot, the great majority of it—I seem to recall there were some parts typed; not many—was written in pencil.

And as I have said, in all honesty, I had somewhere along the line an impression from this time that I had that something was wrong with the schedule D. I have always said that.

Every one of you on this committee that has been a lawyer has had, or even anything else, has had the feeling that there is something wrong with a document and you really can't put your finger on it. And sometimes you do before it is too late, and sometimes you don't.

And that is the feeling that I had; that there was something wrong with schedule D. Impression that came to me afterward. It wasn't something I formed right then when I looked at it.

And I continued to talk to him. And I looked through it. We didn't talk about the return, we didn't talk about any of the provisions of it. But in the process I saw the amount of the refund.

And I said, how could you—how did you accomplish that? I said. And he said, I found a way where I could establish your losses from 1978.

I said, 1978 losses? And he said, yes. I said, well, tell me about that. I want to hear how you did that. And he started out by telling me that I could take a loss anytime, that I wasn't governed by any single period of time, and that you could change from being on a cash basis to accrual basis anytime you got ready. All of this in a solid, authoritative way.

And I don't say that I am—was totally and 100 percent sucked in on this man—by this man. Certain things he told me that I should have known immediately. Should have put me on guard but it didn't.

And I said, as long as—that is good, I said, as long as you can support it. And he said, I can sure support it. And I said, well, that is all that I am concerned about. And I said, because I don't want any trouble with the IRS because I got all the trouble with the FBI that I can handle right now. That is what I told him. He said, I know that.

So he left, and I never talked to him about the return until he called and told me that he was going to testify before the Portland grand jury, and he had been subpoenaed. He called at that time to advise me that—I said, well, I said, they are mounting an IRS investigation there, and he said, yes. He said, but it doesn't have anything to do with income tax.

I said, well, what does it have to do with? He said, it has to do with some kind of report you have to file with the Government. I said, disclosure report, and he said, that is correct.

I said, well, what have—what are you supposed to take? And he said, well, I am not supposed to take anything yet. He said, the guys, or the FBI agent and an IRS agent were in here and talked to me, and then he started talking.

And I said, OK. I said, if this is what is going on, I said, there is nothing I can do about it. He said, oh, yes—the question he asked me—he said, you want me to cooperate with them or not? This is way back. I said, I don't care what you do.

Then when he got back from Reno when he was testifying, and we started—he started telling me what to do—he did. I called him in the office and I said to him one day, this is after my original conversation where I said you have indicted me and after we had gone and gotten the yellow sheet, I said, all right, this time I have looked at my return and I have looked at it closely. And I called him up there and I handed him the schedule D, and I said, I want you right now to explain to me. I said, when you were in the office the day that you, brought my return, I said, you told me how you could support it. And I said, all right, I want you to explain it to me.

First, I want to know what you did, and then second, I want to know how you did it, and third, I want to know what you can support it with.

And he said, well, he said, here is what I did. And so then he explained to me that he had added up the amount of losses that I had when I sold my law practice; that he had deducted what he called a recapture which was the amount of accounts receivables collected by Quintana and Brown from the amount of the losses, projected loss; and he arrived at the figures that he had on schedule D.

And I said, I want this in writing. I want it in writing. I said, you go back, and I said, and you bring back to me in writing exactly how you arrived at the 1978 loss and how you treated it.

And he did. And he went and brought it back.

Mr. GOODMAN. Now, Judge, did there come a time that you received a refund check from the IRS?

Judge CLAIBORNE. Well, I have a—you want to show me the copy of the—what he worked out?

Mr. CHABRAJA. Mr. Chairman, we just had a writing identified that comes from Mr. Watson that I am not familiar with. Maybe Mr. Goodman can mark and identify this writing.

Mr. GOODMAN. I am sorry I did not——

The CHAIRMAN. Will you restate your objection?

Mr. CHABRAJA. Well, it is not an objection, other than I think we have just had a writing identified. The judge testified that he had Mr. Watson give him a written explanation. It seems to me that that is appropriate to mark at the moment.

Mr. GOODMAN. I am looking for it, Mr. Chairman.

Mr. CHABRAJA. It is another new document.

Mr. GOODMAN. And I found it.

May I approach the clerk?

The CHAIRMAN. Yes.

Senator RUDMAN. Mr. Chairman?

The CHAIRMAN. Senator Rudman?

Senator RUDMAN. Could we just inquire as to whether or not the document that we are about to view has ever been in evidence in any other proceeding?

Mr. GOODMAN. To my knowledge, it has not been.

Senator HATCH. Could we inquire why not? Why is it suddenly available?

Senator WARNER. And if I might add, where has it been all this time.

Mr. GOODMAN. I am going to try to answer with as much candor as I can. I think I have had it all this time in certain files which were provided to me.

As to why it was never introduced, I never felt that it was that important to have into the record. I wasn't even going to introduce it today, as you could see. I hope you could see that. It was Judge Claiborne who asked me to go get it, and he was discussing it, and apparently he wants it marked and introduced.

I have been the lawyer. I make the decisions as a lawyer, and I just didn't feel it is that important. Apparently the man who is fighting for his life here does.

Senator HATCH. This was given to you by Judge Claiborne?

Mr. GOODMAN. I am not sure, Mr. Senator. It may have been provided to me from one of three sources. I don't think it was Judge Claiborne. It could have been Lawrence Semenza, who was representing Mr. Watson, or it could have come from a file which I requested either from Mr. Watson or Mr. Semenza.

Senator HATCH. But you had it at the beginning of the trial?

Mr. GOODMAN. Oh, I think from the inception, even before the first trial.

I am advised by my colleague that it came from Mr. Semenza.

The CHAIRMAN. I have had several requests for a brief recess. During that time, Mr. Goodman, do you think it would be possible for us to get copies made of this document, so that members of the committee could look at it, and so that counsel for the managers could look at it?

Senator DECONCINI. May I just ask a question of the chairman? Is it the understanding that there are several documents here, one is a refund document from the IRS and another one is a document from Mr. Watson to the judge explaining how he substantiated it?

The CHAIRMAN. Mr. Goodman, will you respond to that?

Mr. GOODMAN. Yes. In the House exhibit No. 33 you will see a refund check which the Judge received from the Internal Revenue Service in the amount of $44,256.

The document which is now being marked and will be copied is a document given to Judge Claiborne by Jerry Watson.

Senator DECONCINI. And that is all?

Mr. GOODMAN. That's all we're talking about.

Senator DECONCINI. That's all this is?

Mr. GOODMAN. Yes. It's a one-page document.

Senator DECONCINI. First of all, Mr. Chairman, exhibit 33 is a check, a copy of a check. It's for $44,256. I take it that's the one you mean as a refund, is that right?

Mr. GOODMAN. That's the refund check.

Senator DECONCINI. OK. Thank you.

Senator WARNER. Could he once again repeat the trail of the document, from when it was handed to Judge Claiborne to how it appears in this room today?

Mr. GOODMAN. I'll do the best I can.

Judge Claiborne got the document from Mr. Watson when he demanded that Mr. Watson justify in writing to him what Mr. Watson used in order to prepare the schedule D.

I am not sure that it is that document—and Judge Claiborne can tell us better than I can—that ended up in my file. I believe the copy that I have was received from either Mr. Watson or Mr. Semenza.

Now, I have an office full of files that would, without any exaggeration, on this case that I got out in anticipation of cominq back here that would run from the beginning of the House's table virtually to where Mr. Stuhff is sitting over there, in big boxes. What I did, in anticipation of this hearing, I got on my hands and knees and I crawled through those boxes, pulling out documents that I thought were pertinent. I do have a file from which I got this particular document, and it is a file which I have marked for my purposes in trial preparation as "Re: Jerry Watson." It was in that particular document that I found this.

It was also in that file that I found a telegram, a copy of the telegram that Watson sent to the grand jury, which I don't believe is part of this record, either. Once again, you have to make certain choices or else we could be here forever——

Senator RUDMAN. We may be, Mr. Goodman.

Mr. GOODMAN. I hope so, Senator Rudman.

Mr. CHABRAJA. Mr. Chairman, I would like to——

Senator WARNER. The document which is the subject of the present inquiry being marked, is it an original or a copy?

Mr. GOODMAN. It is a copy.

Senator WARNER. Do we know where the original is?

Mr. GOODMAN. I would have to consult with my client.

Judge Claiborne, do you know where the original is?

Judge CLAIBORNE. No, I do not. The copy I gave either to you or Mr. Johnson, who was a tax lawyer in this case. I think it was a copy that I got—I'm not sure of that. It might have been the original.

Mr. GOODMAN. It's conceivable that—and I can't represent it without perhaps making a phone call—but it's conceivable that an attorney in San Francisco who was representing Judge Claiborne on the tax aspects of the prosecution could have the original.

The CHAIRMAN. Mr. Chabraja, do you wish to make a——

Mr. CHABRAJA. Mr. Chairman, this document, which I have yet to see, wasn't identified in the preliminary pretrial statement. It was not alluded to in any of the criminal cases. I suggest that an orderly procedure for this kind of fresh document, in a case that's had a history of questioned documents, be that it be photocopied, distributed to the panel and to myself, and that voir dire ensue, myself having an opportunity to question with respect to it and the panel having an opportunity to question with respect to it before any decision be made with respect to its authenticity——

The CHAIRMAN. That is the course that the Chair proposes to follow, and for that purpose we'll take a 5-minute recess.

[Recess.]

The CHAIRMAN. The committee will come to order.

Mr. Goodman.

Mr. GOODMAN. Mr. Chairman, I would like this marked, please.

[Whereupon, Claiborne exhibit No. 26 was marked for identification.]

Mr. GOODMAN. Judge Claiborne, I am going to show you what has been marked for identification as proposed exhibit No. 26 and ask you whether this is the document that was handed to you by Jerry Watson.

Judge CLAIBORNE. No. It has part of the information—some of the information that's on this sheet was on the sheet that he gave me, but this is not it.

Mr. GOODMAN. Maybe that's the reason that I didn't introduce it at the time of trial. I don't know why, but apparently that's the judge's response.

Senator RUDMAN. Mr. Goodman, I'm sorry. I would like to have the question again and I would like to hear the answer again.

Mr. GOODMAN. The question was, "Judge, is this the document which Jerry Watson handed to you?" And the answer—Judge, is this the document that Jerry Watson——

Judge CLAIBORNE. No, it is not. The upper portion is the same, down about half of the page, but it is not the same.

Mr. GOODMAN. Do you know how that document was prepared, the one that I just showed you?

Judge CLAIBORNE. No; I do not.

Mr. GOODMAN. Do you know who prepared it?

Judge CLAIBORNE. I think Mr. Watson did, but I don't know that.

Mr. GOODMAN. But you're quite sure that that is not the document that Mr. Watson presented to you?

Judge CLAIBORNE. I'm rather sure that it has more information on it than the document that he gave me.

Mr. GOODMAN. At the time that you were meeting with Mr. Watson, and asking him to justify in writing the preparation of the schedule D, was there any further conversation with Mr. Watson about the tax return?

Judge CLAIBORNE. I said to him—what I said to him was that, "Can you support this with solid—" I think I used the word "solid" as I remember, for the lack of a better word, I said, "—accounting principles and regulations of the Revenue Code." And he said, "Yes." I said, "Well, if you can do that, then we have no problem." He said, "Judge, I took this return to two individuals in the Internal Revenue Office, in whom I have a lot of confidence. One of them works on nothing but audits over a million dollars," and he said, "Both of them have told me that this return is right."

Mr. GOODMAN. "This return is right"?

Judge CLAIBORNE. That's what he said. It's right.

Mr. GOODMAN. Did there come a time after that discussion with Mr. Watson that you received a refund check from the Internal Revenue Service?

Judge CLAIBORNE. That's correct.

Mr. GOODMAN. Would you please provide to Judge Claiborne exhibit No. 33?

By the way, Judge Claiborne, when——

Mr. CHABRAJA. Mr. Chairman, may we have the time and place of this conversation? I thought we were talking about 1983.

Mr. GOODMAN. When did you have the conversation that you just referred to with Mr. Watson?

Judge CLAIBORNE. It would have been 3 or—possibly 3 weeks—I would say 3 weeks prior to my indictment.

Mr. GOODMAN. And you were indicted on——

Judge CLAIBORNE. I'm just guessing at that. I mean, this is in the time period when I was indicted and when he appeared before the Reno grand jury. I don't know whether it was just a few days or a month, but it was in that timeframe.

Mr. GOODMAN. Did there come a time that you received a refund check from the IRS? Did you get a refund on the 1980 return?

Judge CLAIBORNE. Yes; I did.

Mr. GOODMAN. You have in front of you exhibit No. 33, do you not?

Judge CLAIBORNE. Yes; I do.

Mr. GOODMAN. And the refund check is in what amount?

Judge CLAIBORNE. It's $44,256.

Mr. GOODMAN. And after you got the refund check, did you—what did you do? Did you see Mr. Watson?

Judge CLAIBORNE. I called him—I tried to call him the very evening. I came to my home and the refund check had arrived while I was working. I saw the amount and I went in immediately and I called him but I didn't catch him. So the next morning I called him and went right to his office that morning.

I said—I showed it to him. He said, "I don't know." He said, "Huh." He said, "Well, I'll get to the bottom of it," and he said "I'll call you." I said all right. I started out and he said "Take the check with you". He said, "All I want is just the number". He took the number of the check. He called me back and he said "Yeah, go ahead and cash it." He said, "That extra amount," he said, "was $20,000 that you paid on your estimate."

Mr. GOODMAN. All right. And did you cash it, or did you deposit it?

Judge CLAIBORNE. Oh, I cashed it.

Mr. GOODMAN. Where did you cash it?

Judge CLAIBORNE. The Golden Nugget.

Mr. GOODMAN. How did you cash it?

Judge CLAIBORNE. How did I cash it?

Mr. GOODMAN. Right.

Judge CLAIBORNE. I turned it over and signed my name on it and took the cash.

Mr. GOODMAN. And you took the check and went up to the cage at the Golden Nugget?

Judge CLAIBORNE. That's right.

Mr. GOODMAN. And they handed you $44,000 in cash?

Judge CLAIBORNE. That's correct.

Mr. GOODMAN. And you gave them this IRS check which you had gotten——

Judge CLAIBORNE. That's right.

Mr. GOODMAN. Now, when was your tax return signed?

Judge CLAIBORNE. When was it signed?

Mr. GOODMAN. Yes, the tax return for 1980, which is exhibit No. 27. I think you have it right in front of you.

Judge CLAIBORNE. I don't see it. Are you talking about the 1979 return or the 1980 return?

Mr. GOODMAN. The 1980 return.

Judge CLAIBORNE. Wait a minute. What exhibit number is it?

Mr. GOODMAN. It would be exhibit No. 27.

Judge CLAIBORNE. I don't have 27, do I?

Mr. CHABRAJA. Mr. Chairman, while they're sorting exhibits, I take it that Mr. Goodman has withdrawn defendant's exhibit No. 26 that he had marked and offered.

Mr. GOODMAN. I didn't offer it.

The CHAIRMAN. He has not yet offered it.

Mr. CHABRAJA. I don't know what he's going to do with it, but I suggest that it not be quite that easy and that we set some time aside somewhere along the line here to conduct some voir dire in an effort to ascertain just what in the world this document is that nobody has ever seen before.

The CHAIRMAN. I think there's considerable interest in the document.

Mr. GOODMAN. It's not going to disappear.

Do you have it in front of you, Judge, the 1980 return? No? OK. All right. When did you sign it?

Judge CLAIBORNE. June 15.

Mr. GOODMAN. Of what year?

Judge CLAIBORNE. Of 1981.

Mr. GOODMAN. June 15, 1981.

Judge CLAIBORNE. That's correct.

Mr. GOODMAN. Now, as a Federal judge, do you have certain reporting requirements?

Judge CLAIBORNE. Yes; I do.

Mr. GOODMAN. As far as your financial transactions are concerned and the amount of moneys that you earn during particular periods of time. Do you have such——

Judge CLAIBORNE. I do, yes.

Mr. GOODMAN. Now, I would like you to see exhibit No. 1—Judge Claiborne's exhibit No. 1—and I would like to approach the easel.

Do you recognize that exhibit?

Judge CLAIBORNE. Yes; I do.

Mr. GOODMAN. What is it?

Judge CLAIBORNE. It's a copy of my disclosure form to the Ethics Committee for the year 1980.

Mr. GOODMAN. And was this filed with the Ethics Committee?

Judge CLAIBORNE. Yes; it was.

Mr. GOODMAN. And what date does it bear?

Judge CLAIBORNE. I can't see it. I think it's May 15, 1981, for the year 1980.

Mr. GOODMAN. Just 1 month before you signed the tax return, which was prepared by Mr. Watson's office?

Judge CLAIBORNE. That is correct.

Mr. GOODMAN. And on this ethics form do you list past fees from law practice?

Judge CLAIBORNE. Yes; I do.

Mr. GOODMAN. And do you list the amount of those past fees from the law practice?

Judge CLAIBORNE. Yes; I do.

Mr. GOODMAN. What did you state to the Judicial Ethics Commission as far as the fees earned from your law practice?

Judge CLAIBORNE. The sum of $88,500.

Senator PRYOR. What was that date again, please? May 8?

Mr. GOODMAN. It's difficult to see from the copy. It's May 15, 1981.

The CHAIRMAN. Mr. Goodman, we'll have to suspend for 15 minutes while our members of the Senate go to vote.

[Recess.]

The CHAIRMAN. Judge, I don't have to remind you that the oath you took is still binding.

Judge CLAIBORNE. Yes, sir; I understand.

The CHAIRMAN. Mr. Goodman, let me take this opportunity to inquire of you, if you can make some estimate of the amount of time you will yet require for direct examination.

Mr. GOODMAN. I have no further questions of the judge on direct.

The CHAIRMAN. The counsel for the managers on the part of the House has asked for an opportunity to inquire as to the origins of what was marked as defendant's exhibit 26. We might take——

Mr. GOODMAN. I might be able to help. It's almost like "Perry Mason" in a way. I am advised over the break here that Mr. Watson apparently told somebody that he had an original of this document with him. I have not seen it. I didn't even want to come close to seeing the document. But I have been advised that it has been handed to Mr. Stuhff and that he has possession of it—the gentleman at the end of the table.

Mr. CHABRAJA. Who is he?

Mr. GOODMAN. Mr. Stuhff is one of the attorneys who is assisting here. Apparently he got it from Mr. Watson when he was advised that Mr. Watson had it.

Mr. CHABRAJA. Mr. Chairman, exactly when did this take place?

Mr. GOODMAN. During this very break.

Senator RUDMAN. Who does that gentleman represent, Mr. Goodman?

Mr. GOODMAN. He is one of Judge Claiborne's attorneys.

Senator RUDMAN. So he is one of your associates in this proceeding?

Mr. GOODMAN. That is correct.

Senator RUDMAN. And Mr. Watson handed it to him?

Mr. GOODMAN. That's my understanding. I did not see it handed to him. I was just advised that Mr. Watson told, I think Mr. Gereau, that he had the document with him. But I'm acting from hearsay here. I haven't even looked at it. I didn't want to touch it. I don't want to be any part of it until we have an opportunity to look at it together.

The CHAIRMAN. Mr. Chabraja, do you have a comment?

Mr. CHABRAJA. Yes; I do, Mr. Chairman. My suggestion is that that document be given back to Mr. Watson. We are treated to the anomaly here of Mr. Watson, who is represented by a character witness on behalf of Judge Claiborne, asserting his fifth amendment privilege after he testified fully, now sitting in the back relying on his fifth amendment privilege, pulling documents out of his personal bag.

Mr. GOODMAN. I will stipulate with Mr. Chabraja, with the Chair's permission, to have the document back with Mr. Watson. That's where it should have been. It shouldn't be up here at this point in time. I would prefer to have the custodian of the document be the one responsible for testifying about it.

So, if you have no objection, if you want to make a copy of it, perhaps, and then give the original back to Mr. Watson——

Senator RUDMAN. Mr. Chairman, Mr. Chairman, may I please?

The CHAIRMAN. Senator Rudman.

Senator RUDMAN. Mr. Chairman, I am very disturbed by what's going on here. I'm very concerned. We've got a witness here who has taken the fifth, who now produces a document. I am not questioning, believe me, the ethics or the propriety, but Mr. Goodman I believe is lead counsel here.

Mr. GOODMAN. I am.

Senator RUDMAN. Therefore, this other gentleman is under the general control of Mr. Goodman.

Mr. GOODMAN. I understand that.

Senator RUDMAN. Whether Mr. Goodman took it in his hands or not, it has the same effect as being in Mr. Goodman's hands.

I don't want that document touched by anybody before it comes before this committee. I would like the chairman to order that document be forthwith returned to that witness, Mr. Watson, now. I don't think it should be copied. I don't think anything should be done with it. Let it go to him and let it come before this committee, if at all, in the normal course.

Senator HEFLIN. Mr. Chairman, I would suggest that it be put with the proper custodian to be kept and Mr. Watson discuss it and verify it with the custodian, and that the custodian keep it until we reach a point of where we will discuss it.

Senator WARNER. Mr. Chairman, I agree with the distinguished Senator from Alabama. This is a critical piece of potential evidence. It should be kept in some form of safekeeping, and perhaps the Chair could inquire of counsel if they could agree on some procedure by which this document could be kept in safekeeping until such time as we determine the probity or absence thereof.

Senator PRESSLER. I agree with that, Mr. Chairman. I think we should give it to the custodian and then decide what to do with it.

Mr. GOODMAN. Perhaps the clerk could maintain custody of it.

Mr. CHABRAJA. Mr. Chairman, I would be satisfied if the document was placed in the custody of the Secretary of the Senate under seal, and the document not to be opened until Mr. Watson appears to authenticate it and tell us what it is.

The CHAIRMAN. Do you mean the clerk of the committee?

Mr. CHABRAJA. The clerk of the committee—I didn't know whether the proper title was clerk or secretary.

The CHAIRMAN. Well, that perhaps is the most practical solution. We will direct the clerk of the committee to receive it, to immediately seal it, not to break the seal until ordered by the committee.

Is that agreeable now to all the parties?

Mr. GOODMAN. It is.

The CHAIRMAN. Is it agreeable to the committee?

[No response.]

The CHAIRMAN. Well, unfortunately, that is the bell for a further rollcall vote in the Senate.

Yes, Mr. Rodino.

Mr. RODINO. Mr. Chairman, might I suggest at this time that if the Senate is going to recess for a rollcall vote, it is getting near that time that we thought might be an agreeable time when we might conclude, at least for this afternoon or late evening.

Since Members have already made reservations for plane flights back home and other commitments, would it be all right to recess at this time, since the counsel for the respondent has already indicated that he has concluded his part of the direct?

The CHAIRMAN. I want to be sure, before we take that step, that Mr. Goodman has, in fact, concluded his direct and that he has rested.

Mr. GOODMAN. I have concluded my direct, yes, sir. I haven't rested the case because the judge has not yet been cross-examined or examined by the committee. I do want to check on my——

The CHAIRMAN. But you have gone as far as you intend to go on direct examination at this time?

Mr. GOODMAN. Yes. That's correct, Mr. Chairman.

The CHAIRMAN. It had been my hope that we might go until about 7 o'clock, but since we have reached this juncture, it does seem to be a natural breaking point. So we will adjourn—yes, Mr. Chairman?

Mr. RODINO. If I may make one further inquiry of counsel for the respondent, Mr Chairman, whether or not they have any other witnesses to produce other than those which already had been authorized under the ruling of the Chair.

The CHAIRMAN. Would you advise us?

Mr. GOODMAN. Yes, Mr. Chairman.

Pursuant to the present rulings, unless there's a modification of the same, Judge Claiborne would be our last witness.

Senator HEFLIN. Mr. Chairman, I would suggest either the committee or some counsel call some person knowledgeable about the regulations of the Internal Revenue Service pertaining to fraud penalties, criminal penalties, negligence penalties, and guidelines and regulations, who might inform us as to what has been the policy of the Internal Revenue Service relative to the imposition of penalties and relative to criminal prosecution.

It may well be that we would need additionally someone who could testify as to what guidelines have been established by the Department of Justice pertaining to criminal prosecutions in matters similar to this, too. I just think that may well be helpful to us as we consider the application of these facts to those guidelines and some regulations and things that may pertain to this.

The CHAIRMAN. We will make every effort to get that kind of expert view, Senator Heflin.

There being no further business that it appears possible to do this afternoon, the committee will stand in recess until the hour of 9 on Monday morning, 9 o'clock. All subpoenaed witnesses are advised to be present.

[Whereupon, at 5:54 p.m., the committee was in recess.]

SENATE IMPEACHMENT TRIAL COMMITTEE

Appointed Upon the Adoption of Senate Resolution 481, 99th Congress, 2d Session, Pursuant to Rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials

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MONDAY, SEPTEMBER 22, 1986

U.S. SENATE,
SENATE IMPEACHMENT TRAIL COMMITTEE,
Washington, DC.

The committee met, pursuant to notice, at 9:15 a.m., in room SR-325, Russell Senate Office Building, Hon. Charles McC. Mathias, Jr. (chairman) presiding.

Present: Senators Mathias, Sarbanes, Bingaman, Gore, Pryor, DeConcini, Heflin, Warner, Rudman, Pressler, Hatch, and McConnell.

Managers and counsel from the House of Representatives present: Peter W. Rodino, Jr., Robert W. Kastenmeier, William J. Hughes, Romano L. Mazzoli, Dan Glickman, Hamilton Fish, Jr., Henry Hyde, Michael DeWine, Nicholas D. Chabraja, special counsel, and David DeBruin, associate special counsel.

House Judiciary Committee staff present: M. Elaine Mielke general counsel; Alan F. Coffey, Jr., associate general counsel; Judith Bailey, counsel; Daniel M. Freeman, counsel; Gary Goldberger, counsel; Warren S. Grimes, counsel; Joseph V. Wolfe, counsel, and Jonathan R. Yarowsky, counsel.

Respondent and counsel present: Hon. Harry E. Claiborne, respondent; Oscar B. Goodman, counsel; Senator Howard Cannon, counsel, Michael V. Stuhff, associate counsel and David Z. Chesnoff, associate counsel.

Staff present: Michael Davidson, counsel; Floyd M. Riddick, consultant; John B. Childers, staff director; Anthony L. Harvey, clerk; Byron F. Hoover, assistant clerk; Ann Pincus, press liaison, and Randy Dove, press liaison.

The CHAIRMAN. The committee will come to order.

We had completed the direct examination of Judge Claiborne on Friday, and the managers on the part of the House advise me that they are now prepared to begin cross-examination, So, Judge, if you will come to the witness stand.

Once again, I am sure I do not need to remind you that the oath you took earlier in these proceedings is still binding upon you.

Mr. CHABRAJA. Good morning, Mr. Chairman and Senators.

The CHAIRMAN. Mr. Chabraja.

Mr. **Chabraja**. May I hand Judge Claiborne a copy of the House Managers' exhibits for his use during the course of the examination?

The **Chairman**. You may.

CROSS-EXAMINATION

Mr. **Chabraja**. Judge, we will, during the course of the examination, from time to time, refer you to those exhibits, but in the meantime, we will talk about a few things having to do with your background.

During the course of your direct examination, I learned that there came a period of time in your private practice when you began to devote yourself exclusively to litigated matters.

Judge **Claiborne**. Yes.

Mr. **Chabraja**. And that was the last 20 years of your private practice, more or less?

Judge **Claiborne**. Yes.

Mr. **Chabraja**. All right. And when you were in private practice, it is my understanding that you defended several criminal tax fraud trials.

Judge **Claiborne**. I do not recall any. As lead counsel, are you talking about that?

Mr. **Chabraja**. Either as lead counsel or as a member of the defense team.

Judge **Claiborne**. I have been on the defense team on several tax cases; not a large number, but several.

Mr. **Chabraja**. Were these by and large jury cases?

Judge **Claiborne**. Yes.

Mr. **Chabraja**. Did you participate as one of the defense counsel on the team in the drafting of instructions to be tendered to the court?

Judge **Claiborne**. Once again, I would have to say that I do not really know. It is conceivable that I could have worked on instructions in nontechnical areas of a tax case, because that was my field as far as criminal law was concerned, as I say, excepting, naturally, the technical aspects of the tax law. I do not think I have ever drafted an instruction in that regard.

Mr. **Chabraja**. All right. But certainly, in the course of the defense of a criminal case, you would have occasion to read the instructions tendered to the court?

Judge **Claiborne**. Oh, yes.

Mr. **Chabraja**. And you were not unfamiliar with the standard instructions in a section 7206, subparagraph 1 case?

Judge **Claiborne**. Talking about then or now?

Mr. **Chabraja**. Then.

Judge **Claiborne**. Then, I am generally familiar with it, yes.

Mr. **Chabraja**. And you were aware of the burden of proof and the elements of the crime of income tax evasion from your familiarity with those instructions?

Judge **Claiborne**. Oh, yes.

Mr. **Chabraja**. All right. And you were well aware of the instruction that is standard with respect to good faith reliance on a tax prepare?

Judge **Claiborne**. Yes.

Mr. **Chabraja**. Tax preparer, excuse me. I misspoke.

Judge **Claiborne**. Yes, I would be aware of that. In exactly what case I was in that I became aware of it, I do not know, but I was aware of it before I got on the bench.

Mr. **Chabraja**. All right. And then while you were sitting as a judge, I think it came out during the cross-examination of one of your character witnesses, Mr. Lieberman, you published about eight opinions on tax issues during the course of bench trials? Is that about accurate?

Judge **Claiborne**. Well, I would say yes to that because I do not really know the number, and I have never checked to see. But that would sound about right, I am sure.

Mr. **Chabraja**. Rather than go through the entire list, I will have the clerk mark as House exhibit No. 40 a list of cases that apparently was prepared by Senator Warner or someone on his staff that purports to be a list of the cases that you had published opinions in while sitting on the bench. I will have this document marked after you take a look at it.

Judge **Claiborne**. Yes, I saw this before.

[Whereupon, House exhibit No. 41 was marked for identification.].

Mr. **Chabraja**. And can you verify in fact that each of those cases were cases wherein you published opinions on tax issues?

Judge **Claiborne**. No, I cannot. Some of them I can.

Mr. **Chabraja**. Some of them you remember and some of——

Judge **Claiborne**. Yes. Some of them I remember; some of them I do not.

Mr. **Chabraja**. All right. You do not have any doubt, do you, that even if you do not remember them, that each of them were cases where you published opinions?

Judge **Claiborne**. Well, I am sure that Senator Warner would not attribute these cases to me if they were not in fact my cases.

Mr. **Chabraja**. OK.

Excuse me, Judge Claiborne. I have been corrected by the clerk of the committee that that is House exhibit 41 that we have been discussing, the list of cases.

Senator **Heflin**. What was the exhibit number?

Mr. Chabraja. 41. Excuse me, Senator. I misspoke.

These eight or nine opinions which I showed you listed on exhibit 41 have to do with cases where you were sitting without a jury, I would suspect. You would not have occasion to publish an opinion in a jury case, would you?

Judge **Claiborne**. No, you would not, but—you are correct.

Mr. **Chabraja**. OK. Then that answer leads me to the fact that certainly you had tax cases where you sat with a jury, did you not?

Judge **Claiborne**. Yes.

Mr. **Chabraja**. And can you remember that you had a number of those during the period when you were sitting on the bench?

Judge **Claiborne**. Yes. I would say six or eight.

Mr. **Chabraja**. Six or eight jury cases. And a number of those cases, it is my understanding, were section 7206, sub 1 cases?

Judge **Claiborne**. Yes.

Mr. **Chabraja**. Willful evasion of income tax?

Judge Claiborne. No. I think the majority of them were false statement cases.

Mr. Chabraja. OK. False statement. But in either——

Judge Claiborne. In fact, I think all of them were.

Mr. Chabraja. Tell me what you mean by false statement.

Judge Claiborne. Well, I mean making a false return.

Mr. Chabraja. OK. Making a false return. Understating income?

Judge Claiborne. That is correct.

Mr. Chabraja. OK. And you had occasion, did you not, in those jury cases to instruct the jury on the proper elements of that crime?

Judge Claiborne. That is correct.

Mr. Chabraja. So once again, you were very clear on the law with respect to understatement of income?

Judge Claiborne. Yes. Let us put it this way: I had, I think, an adequate knowledge of the case and the section number under which it was tried with the aid of accepted jury instructions from the ninth circuit to adequately instruct the jury on the proper——

Mr. Chabraja. OK. And once again, you were well aware of the instruction that goes with the alibi defense of good faith reliance on the tax preparer? You had given——

Judge Claiborne. I do not recall any case where that was brought into play.

Mr. Chabraja. Where you gave that charge to the jury?

Judge Claiborne. I do not recall any case that I did.

Mr. Chabraja. All right.

Judge Claiborne. But I did know the principle.

Mr. Chabraja. You knew the principle?

Judge Claiborne. Yes.

Mr. Chabraja. In addition to the eight opinions that we discussed on House exhibit 41 and the number of tax cases where you presided with a jury, you had, did you not, a number of cases where you sat as the trier of fact and published opinions that were unreported? Do you recall that?

Judge Claiborne. No, I do not.

Mr. Chabraja. You do not.

Judge Claiborne. You know, some of the opinions are published and some of them are not published, and to ask me which of them or the percentage of them, I would not have any idea, sir.

Mr. Chabraja. I do not want to do that. I just want to elicit from you information with respect to the universe of tax cases that you had participated in.

I think we have agreed that you had no reason to dispute the accuracy of House exhibit 41.

Judge Claiborne. Oh, I do not dispute it.

Mr. Goodman. Excuse me, Mr. Chairman. I believe that a false impression is being left with the committee regarding proposed exhibit 41—it is not yet into evidence—to suggest that these eight cases are in fact related to 7206(1) violations or actually Internal Revenue Service violations under the code.

Mr. Chabraja. I made no such statement, Mr. Chairman.

Mr. Goodman. But the tenor of the questions, I would suggest, would suggest that, and I object on that basis. I do not want to interrupt Mr. Chabraja. I would prefer not to, but I think that he is misrepresenting this document.

Mr. CHABRAJA. Mr. Chairman, if the purpose of the objection is for clarification, Mr. Goodman's rights with respect to redirect, I take it, are preserved. Otherwise, he is just interfering with the examination.

The CHAIRMAN. Well, I think you can continue, but Mr. Goodman has a point. If that is not your purpose, then I think——

Mr. CHABRAJA. That is not my purpose.

The CHAIRMAN. You should develop exactly what line you wish to lay down.

Mr. CHABRAJA. Judge Claiborne, I will be frank with you. I am developing your knowledge of tax concepts, both criminal and civil, and familiarity with the code. So that Mr. Goodman's objection is taken care of, we will begin with that premise, all right?

Judge CLAIBORNE. I anticipated that.

Mr. CHABRAJA. OK. And we covered on House exhibit 41 the eight opinions that I could find, and that apparently Senator Warner could find, where you had in fact published and had your decisions picked up by a reporter. I have also——

Judge CLAIBORNE. Yes, but wait a minute. Those were not tax cases, all of them.

Mr. CHABRAJA. They were not?

Judge CLAIBORNE. No.

Mr. CHABRAJA. They had tax issues that you wrote on?

Judge CLAIBORNE. No.

Mr. CHABRAJA. No?

Judge CLAIBORNE. No, not all of them.

Mr. CHABRAJA. May I see the exhibit?

Let me hand you, once again, Judge Claiborne, House exhibit 41 and ask you to point out to me the cases that are not tax cases.

Senator BINGAMAN. Mr. Chairman, I think if the witness is going to continue to be examined on this, maybe we should offer it into evidence.

The CHAIRMAN. Do you have any objection, Mr. Goodman?

Mr. GOODMAN. I would. With all due respect, I would suggest the best evidence would be the cases themselves, the text of the cases, so the judge could look at it rather than to guess, rather than to have a list of cases.

Mr. CHABRAJA. I agree with Mr. Goodman. I was trying to short circuit the process. If he would like that as best evidence, I would be pleased to tender to the judge copies of his eight published opinions.

The CHAIRMAN. Why do not you do that.

[Mr. Chabraja hands documents to witness.]

Judge CLAIBORNE. Yes. Go ahead.

Mr. CHABRAJA. Do you find any one of the cases——

Judge CLAIBORNE. Oh, you want me to look at all of them?

Mr. CHABRAJA. I want you to—you asserted a moment ago that the eight cases——

Judge CLAIBORNE. Yes. The very first case was not a tax case.

Mr. CHABRAJA. And which one——

Judge CLAIBORNE. It was a tax—the grand jury investigation included investigation of the respondent's income taxes.

Mr. **Chabraja**. That is the *Bartier* case?

Judge **Claiborne**. Yes. But the issue before the court had nothing to do with income tax at all. It was whether or not—and I will not even have to read the case because I remember it very well. And of all the opinions that I wrote, this is the most cited case by other jurisdictions and other courts and other circuit courts of any opinion that I ever wrote. So I think I am rather familiar with it without reading it.

The issue before the court at that time was whether or not a witness before the grand jury could exercise his rights under the fifth amendment if he had been illegally wiretapped by the agents of the Government. And that was the central issue before the court.

Mr. **Chabraja**. That was, however, a tax case where the targets of the grand jury had filed allegedly fraudulent tax returns in violation of section 7206.

Judge **Claiborne**. No, it was not a tax case. It was an investigation of income tax and racketeering——

Mr. **Chabraja**. At least when it came to you it was an investigation. OK. Are there any other cases there that you do not regard——

Judge **Claiborne**. Nothing came to me but the proposition of whether or not that he could take the fifth.

Mr. **Chabraja**. A procedural issue.

Judge **Claiborne**. That is correct.

Mr. **Chabraja**. Are there any other cases in that list of eight that you do not regard to be tax cases or your work in connection with publishing the opinion is not tax-related?

Judge **Claiborne**. Well, the *Valley Bank of Nevada* v. *City of Henderson* is the third case. It had absolutely nothing to do with the application of the income tax law, save, except the lien provisions of the code. And the proposition then was whether or not an Internal Revenue lien took priority over that of, I believe, the bank in the city of Henderson.

Mr. **Chabraja**. OK. That dealt with the code's lien provisions?

Judge **Claiborne**. That is correct—in a very minor way.

Mr. **Chabraja**. You were establishing priorities in that?

Judge **Claiborne**. That is right, I ruled in favor of the Government. I do not know in this case, and I do not really know whether it was appealed to the circuit or not.

Mr. **Chabraja**. All right. Your memory of the case is good. Are there any others that you do not regard to be tax issue cases?

Judge **Claiborne**. I do not consider No. 4 a tax issue case, either.

Mr. **Chabraja**. The name of that case?

Judge **Claiborne**. It is *Freeman* v. *Rogers Steel and the IRS*. It had something to do with income tax generally but specifically really nothing to do with a case, as I recall. I have not read the case either, but I seem to recall that this fellow took it upon himself——

Mr. **Chabraja**. Judge, I will accept your general characterization of that case without having you give me the facts and the details.

Judge **Claiborne**. No, I would like to, if I might.

Mr. **Chabraja**. Please proceed, if you may.

Judge **Claiborne**. It explains—I believe explains my answer. This fellow took it upon himself to sue the IRS claiming that they had unlawfully assessed fines for four other individuals, not himself, but four other individuals. In other words, they had assessed four other people, and he took it upon himself to bring a suit for those four. I think I dismissed it. I am surprised there is an opinion.

Mr. **Chabraja**. Do you see any others on that list? Your memory is remarkable. Do you see any others on that list that are not, in your view, tax cases?

Judge **Claiborne**. Well, No. 8—I mean, No. 7, I do not consider—certainly not a Federal income tax case. That was a case that I believe—and I hope I am accurate—involved whether the State tax commission could collect tax on cigarettes on an Indian reservation. And I——

Mr. **Chabraja**. And the name of that case, sir?

Judge **Claiborne**. Is *People of the State of Nevada and Nevada Tax Commission* v. *Steven D. King, doing business as King's Smoke Shop.*

Mr. **Chabraja**. So that case you view as one involving exclusively local tax issues?

Judge **Claiborne**. Let me check it. I am going entirely by memory I remember the case, and I am quite certain that it was the Indian reservation case.

[Pause.]

Judge **Claiborne**. I do not see that case. I may have overlooked it.

Senator **Warner**. Mr. Chairman, at this moment, may I address the Chair? Since we are working from a document that was prepared in my office, I will acknowledge that the title of the document—namely, "List of Reported Tax Decisions by Judge Harry Claiborne"—connotes some inaccuracy. I compiled this list of decisions which, in my judgment, involve some element of taxation for the purposes of cross-examination I presume that I will have at some point in time. They are not from a technical standpoint a tax decision itself, but each case has some element of either Federal or State taxation.

It is my intention to show that the judge had some familiarity with the subject of taxation.

Mr. **Chabraja**. Judge, I do not think we need to belabor this issue.

Judge **Claiborne**. I do not think you have it here, sir.

Mr. **Chabraja**. All right.

Judge **Claiborne**. I know it is not here. That case is not here. But I am quite certain that——

Mr. **Chabraja**. But your memory is that it involved local rather than Federal issues.

Judge **Claiborne**. I know it did. I know it did involve the tax on cigarettes in the Indian reservation.

Mr. **Chabraja**. And the only proposition that I have asked you to address yourself to, and the only thing we are trying to establish is that, out of that list of eight reported decisions, in your recollection, three or four of them did not deal with strict Federal income tax issues. Is that a fair summary of what you have just been testifying to?

Judge **Claiborne**. Yes, I would think that is a fair summary, save and except, may I say, there is one other case I do not think had anything to do with—I believe the No. 8 case.

Mr. **Chabraja**. And the name of that case?

Judge **Claiborne**. Is *U.S. and Anthony J. Eguire v. a revenue agent of the IRS, versus James L. Maxwell, doing business as Exchange Enterprises.*

I do not recall if that case had anything to do with interpretation of any of the income tax laws as such. As I remember, it had only to do with whether the IRS could regulate barter organizations, and I believe that was the central point.

Mr **Chabraja**. Let us leave for a moment those eight cases where you published opinions, which will speak for themselves. Do you have a recollection of trying *United States* v. *Burgess* in January 1979, a tax evasion case?

Judge **Claiborne**. Tax evasion?

Mr. **Chabraja**. Yes.

Judge **Claiborne**. May well have been. Yes, I remember that case.

Mr. **Chabraja**. Do you remember the *Delphus Ben Johnson* case, tried in Portland, OR, in March 1979——

Judge **Claiborne**. Yes, I do.

Mr. **Chabraja**. Where you sat as presiding judge?

Judge **Claiborne**. Yes, I do.

Mr. **Chabraja**. And that was a tax evasion case with a count for false return?

Judge **Claiborne**. Yes. I think two counts for evasion and one count of false statement.

Mr. **Chabraja**. Do you remember *United States* v. *Ricky Hanna*, tried in March 1979?

Judge **Claiborne**. I shall never forget that case as long as I live.

Mr. **Chabraja**. And that also was a tax evasion case?

Judge **Claiborne**. Well, the Government claimed it was a tax evasion case. I mean, it was not at all——

Mr. **Chabraja**. The defendant was acquitted?

Judge **Claiborne**. What?

Mr. **Chabraja**. The defendant was acquitted in the *Hanna* case?

Judge **Claiborne** Yes. He was acquitted because the strike force had spent a year, a year-and-a-half investigating a downtown casino and apparently came up with a dry hole They reached down and got a little fellow that was wrapping coins in the hotel and charged him with a false statement growing out of the sale of his car.

Mr. **Chabraja**. Pardon?

Judge **Claiborne**. Growing out of the sale of his automobile.

Mr. **Chabraja**. But false statement on his income tax return, right?

Judge **Claiborne**. Yes.

Mr. **Chabraja**. OK. Let us move on. I do not think——

Judge **Claiborne**. What they did——

Mr. **Goodman**. Mr. Chairman, excuse me. I would respectfully request the witness to have the opportunity to fully respond to the question and not be cut off.

Mr. **Chabraja**. His response was nonresponsive, Mr. Chairman. I did not ask him for a dissertation on the case. I just asked him whether it was a tax case. I think he answered that fairly.

Senator **Sarbanes**. Mr. Claiborne, I think you could develop it briefly. I think you could develop the case briefly, if you wish to.

Judge **Claiborne**. Well, I can just say that it was a case that I felt that they had spent a large amount of money investigating a place, and they wanted to be able to report at the end of the investigation that this investigation was terminated by the successful prosecution of one Hanna, or the prosecution and conviction of Hanna. I think it was an attempt just to justify all the money that they had spent.

Mr. **Chabraja**. Was that a bench trial or a jury case?

Judge **Claiborne**. Jury trial.

Mr. **Chabraja**. And you charged the jury?

Judge **Claiborne**. I did, and at some time in the case I directed—I ordered judgment of acquittal at some time in that case.

Mr. **Chabraja**. You directed a verdict?

Judge **Claiborne**. I sure did.

Mr. **Chabraja**. Do you remember the *United States* v. *Ethel Gates,* tried before you in April 1979?

Judge **Claiborne**. What case?

Mr. **Chabraja**. *United States* v. *Ethel Gates,* G-a——

Judge **Claiborne**. Oh, yes, I remember that case very well.

Mr. **Chabraja**. And that case included a tax evasion count?

Judge **Claiborne**. Yes, I think so, some 70 counts.

Mr. **Chabraja**. All right.

Judge **Claiborne**. Dealing with—and I may say, a very—that was the charge, but it was a charge that really was not the charge. One of those cases where this man was a public officer. He was in a licensing bureau, and he had an arrangement with a man who was in the land sale business, and he was receiving kickbacks from him for favorable treatment in the office, none of which, of course, was declared on his income tax return. And that was the substance.

Mr. **Chabraja**. The substance of the income tax count. Do you recall *United States* v. *Floyd Pattison,* a tax case that you tried in October 1979?

Judge **Claiborne**. I do not think there was a trial of Floyd Pattison

Mr. **Chabraja**. Pattison, P-a-t-t-i-s-o-n?

Judge **Claiborne**. No.

Mr. **Chabraja**. You do not think that case went to trial?

Judge **Claiborne**. I do not recall it went to trial I thought that that was a plea case. I may be wrong.

Mr. **Chabraja**. Do you recall *United States* v. *James C. Hamilton,* a case you presided over?

Judge **Claiborne**. Oh, yes, I do.

Mr. **Chabraja**. In January 1979?

Judge **Claiborne**. Yes.

Mr. **Chabraja**. And that was also a tax evasion case?

Judge **Claiborne**. I am not sure. I think it was filing a false return.

Mr. **Chabraja**. OK. And you were affirmed on appeal in that case, were you not, at 620 Federal Second 712?

Judge Claiborne. Yes, I was.

Mr. Chabraja. All right. And then, you recall, I take it, trying *United States* v. *Harold and Delores Mitchell* in December 1979, another tax case?

Judge Claiborne. I remember that case generally, and it was a case that I heard, I believe, in 1978 when I was sitting in Reno. And I just remember it generally, and I think that they were acquitted by the jury, if I remember.

Mr. Chabraja. But you recall that it was a tax case generally?

Judge Claiborne. My recollection was it was a failure to file a return.

Mr. Chabraja. OK. And you do not want to quarrel with my description of it as a tax case, do you?

Judge Claiborne. Well, no, I do not quarrel with that. I mean——

Mr. Chabraja. Thank you.

Judge Claiborne. It had nothing to do with income tax.

Mr. Chabraja. Do you recall trying a tax case in January 1980 by the name of *United States* v. *James Berg*, B-e-r-g, Berg?

Judge Claiborne. No.

Mr. Chabraja. You have no recollection?

Judge Claiborne. No, I have no recollection of that case.

Mr. Chabraja. Do you recall trying *United States* v. *Victor Vorheese*, V-o-r-h-e-e-s-e, a tax case in 1980?

Judge Claiborne. I remember the *Vorheese* case, yes.

Mr. Chabraja. All right. And you do not quarrel with my description of that case as a tax case?

Judge Claiborne. No. It was either an evasion case or a false statement case.

Mr. Chabraja. All right. Do you recall trying the *United States* v. *Clyde Demming*, D-e-m-m-i-n-g?

Judge Claiborne. No, I do not think that I ever tried that case. I had a preliminary matter, as I remember, having to do with seizure of his money by the IRS, but I was not the judge on that case.

Mr. Chabraja. All right. Do you recall the *United States* v. *Augustine Gallo*, a tax case tried before you in 1980?

Judge Claiborne. Yes. That was principally a bookmaking case. It was not an income tax but an excise tax case. He was tried for illegal bookmaking, failing to pay the gambling tax.

Mr. Chabraja. Gambling tax. Do you recall a case that you tried in 1980, *United States* v. *Harry Mangrum*, M-a-n-g-r-u-m?

Judge Claiborne. This fellow was a lawyer, and I should know, should be able to remember that, but I do not remember trying the *Mangrum* case. I may well have.

Mr. Chabraja. All right. And you do not recall whether it was a tax case or not?

Judge Claiborne. No, I do not. I just do not recall that case. He was a lawyer. I knew him. It may well have been that I tried the case, but I just cannot connect for some reason.

Mr. Chabraja. But in any event, I do not know whether my list is exhaustive, Judge Claiborne. We have just reviewed quite a number of cases where you sat as the presiding judge over tax and tax-related trials.

Judge CLAIBORNE. I would say that you have at least 99 percent of them, because those are cases that Mr. Hendricks of the Justice Department asked me about in the last trial. I would say they were very close to being accurate because they turned every rock over in the county looking for something, I would say exhaustively. So I would say that that was about all of them.

Mr. CHABRAJA. A pretty complete list.

Judge CLAIBORNE. He did not miss much, let us put it that way.

Mr. CHABRAJA. And those are cases that you dealt with from the time that you went on the bench in the fall of 1978 through the year 1980?

Judge CLAIBORNE. Yes. I would say that.

Mr. CHABRAJA. OK. And I did not give you any of the cases that you may have dealt with on tax issues while you were sitting in 1981 and 1982 and, for that matter, early in 1983.

That may not be a fair question, Judge. Do you recall every one of these cases I have talked to you about was 1980 or earlier?

Judge CLAIBORNE. Well, I do not recall that.

Mr. CHABRAJA. All right.

Judge CLAIBORNE. I will take your word for it.

Mr. CHABRAJA. Well, thank you. And is it fair to say that there were other cases in 1981, 1982, tax cases where you sat as the hearing officer?

Judge CLAIBORNE. Could be.

Mr. CHABRAJA. Could be.

Judge CLAIBORNE. It could be, but I do not know that.

Mr. CHABRAJA. All right.

Judge CLAIBORNE. I know I got a number of those cases in the beginning, but frankly, I do not know, you know, what I did in 1981 or 1982.

Mr. CHABRAJA. Judge, we have heard testimony that before you went on the Bench you were widely regarded as a skillful practitioner of the art of trial law. I know in all modesty you may be reluctant to admit that, but that is a fair statement, is it not?

Judge CLAIBORNE. Well, I don't want to appear in any way that I have a great store of humility. Those things sound good, naturally, and I have—let us put it this way: I had a good reputation. I worked hard for my people, and I was a hard-working lawyer. I never claimed to be the smartest lawyer that ever walked in a courtroom, but I always said I could out-work any living human being.

Mr. CHABRAJA. All right. If a trial lawyer is to be successful——

Judge CLAIBORNE. Yes, sir. Very successful.

Mr. CHABRAJA. It is important, is it not, that that lawyer be perceptive?

Judge CLAIBORNE. If he is not perceptive, I do not think he would last long.

Mr. CHABRAJA. OK. So that is a critical skill. We will agree with respect to that.

Judge CLAIBORNE. No question about that.

Mr. CHABRAJA. All right. And he also, a lawyer, a trial lawyer to be successful, must be probing, is that not true, probing of facts and the truth?

Judge CLAIBORNE. Oh, sure.

Mr. **Chabraja**. All right. And you will agree with me that a successful trial lawyer also must be one who can readily pierce through initial appearances; is that not true?

Judge **Claiborne**. No, I would not say that is true.

Mr. **Chabraja**. That is not true?

Judge **Claiborne**. I would not say that.

Mr. **Chabraja**. Would you say that that skill would be extraordinarily helpful in dealing——

Judge **Claiborne**. I would say if a man had that skill that he would be very unusual. I think in my day, I knew all of the great, at least, criminal trial lawyers, and I do not think any of them had that trait.

Mr. **Chabraja**. The ability to pierce through initial appearances?

Judge **Claiborne**. Not initial appearances, no, sir. I learned something early that I found out when I was in law school. One of my professors told me, "Remember this. There is nothing that ever turns out to be as it first appears." And I have always remembered that. I kept that in mind and I found it to be generally true.

Mr. **Chabraja**. OK. And in connection with the successful plying of your trade, it was your responsibility to try and work through initial appearances and find out what that witness was really all about, was it not?

Judge **Claiborne**. I do not think that I made snap judgments or initial judgments at all. I was very careful to work a case in every area. That is, if I were successful—and I would have to plead guilty to the fact that I was—it was only the reason of two factors: One, I level with the jury, and juries had a way of respecting me, and I think for my manner of trying a case; the second would have been that I did not have investigators do my work. If I had a case that involved a crime scene, I went there myself. I spent many hours sometimes doing nothing but sitting and looking at the whole area. I talked to every single witness that I thought would be involved in the case, including prosecution witnesses. I went to their places of business. I went to their homes in the evening, and I talked to them. I knew more about the case when I went into that courtroom, both sides of it, than 9 out of 10 of the prosecuting officers that were trying the case.

Mr. **Chabraja**. That, Judge, is what I have a shorthand way of calling attention to detail. And you would agree with me, would you not, that that is also a critical skill for a trial lawyer?

Judge **Claiborne**. I think he has to be attentive to everything in the case, not only details. I do not really know what you are talking about attention to detail. Any lawyer that is worth his salt is going to pay attention to everything in the case. You know?

Mr. **Chabraja**. And you did that; in fact, you had a reputation for being relentless in your pursuit of the truth. Is that not a fair statement?

Judge **Claiborne**. I have seen that written many times coming from many judges and many lawyers. And I am glad, I am happy that people that I practiced before and with through the years believed that about me.

Mr. **Chabraja**. These very same skills we have been discussing that are properly possessed and necessary to successful trial lawyers are also skills that are necessary for a judge to properly discharge his judicial function if he is going to do a good job. Is that not true?

Judge CLAIBORNE. I would say that to be a good judge that all of the things you mentioned should be requisites. I would not say that all judges possess all those traits. They do not.

Mr. CHABRAJA. But a good one does?

Judge CLAIBORNE. Well, I would not say that. I think all of us, sir, have weaknesses in certain areas. I mean, we are just like you guys, you know, just like a lawyer. You are not perfect and you are not infallible, and some days you walk into the courtroom, and you blow it out of your own stupid—you are not going to admit that, I know you are not. You know, there are too many people watching that may want to hire you after you leave here. [Laughter].

But judges are the same way. I mean, we make mistakes, we make them off the bench and on the bench. We have areas that we are expert in, generally as a result of our experience in the law profession.

Mr. CHABRAJA. Certainly, Judge, we can agree that to err is human. But in your development as a judge and as a lawyer, you tried very hard to develop those skills that we have just talked about, did you not?

Judge CLAIBORNE. I do not think I tried to develop any particular skills, sir. Let us put it this way: Mr. Greenspun when he testified, said that I was the hardest working judge in the whole world. I do not know about that, because I do not know how hard Federal judges work. I know that every Federal judge that I know and that I respect, works unbelievably long hours. And I will tell you this: I have never worked as hard in my whole life as I have worked since I was appointed a Federal judge. I cannot remember a single day that I went to the office and spent less than 12 hours, and many times as many as 14 and 16 hours. So I worked and I worked hard.

Mr. CHABRAJA. And you did that as a private practitioner?

Judge CLAIBORNE. That is right, and I was a chief judge from May 1980 and did not reduce my calendar. I kept the same amount of cases and did, in addition to my regular calendar that I was carrying before I was appointed, all the administrative work for the district.

Mr. CHABRAJA. Judge, when you were in private practice, in addition to being a successful trial lawyer who achieved good results in cases, your practice was successful from a remunerative point of view as well, was it not?

Judge CLAIBORNE. A what?

Mr. CHABRAJA. From a financial point of view.

Judge CLAIBORNE. I have a hearing defect.

Mr. CHABRAJA. From a remunerative point of view. You were well compensated for your efforts, were you not?

Judge CLAIBORNE. Yes. Fortunately, I had a successful practice as far as financially is concerned.

Mr. CHABRAJA. All right. And we know from your record that you were quick to help indigents and others without compensation, but at the same time you managed to do quite well from a financial point of view. Is that not correct?

Judge **Claiborne**. That is right. I have always said, and the records, I think, will support it, that I probably handled more indigent cases than any other lawyer around.

Mr. **Chabraja**. And that is laudatory. And while doing that, for example, let us take the year 1977, you managed to accumulate gross revenue in your private practice of $375,000, and from that gross revenue you managed to have net revenue of $197,000.

Judge **Claiborne**. 1977?

Mr. **Chabraja**. 1977, your last full year in practice.

Judge **Claiborne**. I do not know.

Mr. **Chabraja**. You do not know?

Judge **Claiborne**. That is possible.

Mr. **Chabraja**. Does that sound about right?

Judge **Claiborne**. Yes, that sounds about right.

Mr. **Chabraja**. Sounds about right.

Judge **Claiborne**. Yes.

Mr. **Chabraja**. And that is a pretty good gross revenue for a sole practitioner, and it is a pretty good net, is it not?

Mr. **Goodman**. Excuse me. I object. I do not believe that that states the record properly. The record before this honorable committee is that the judge was not a sole practitioner. He had at least two associates working for him during this period of time, Ms. Quintana and Mr. Brown.

Mr. **Chabraja**. Well, let us go over that, judge.

You were, in your private practice, the sole proprietor, were you not?

Judge **Claiborne**. That is correct.

Mr. **Chabraja**. OK. And while other lawyers worked for you from time to time, you did not have any partners?

Judge **Claiborne**. No partners. They were associates.

Mr. **Chabraja**. OK. And you paid your associates salaries?

Judge **Claiborne**. Oh, yes.

Mr. **Chabraja**. All right. And you had to maintain the office yourself?

Judge **Claiborne**. That is correct.

Mr. **Chabraja**. All right. So if I left any other impression by the use of the words "sole practitioner," I apologize. But you were the sole——

Judge **Claiborne**. But I knew what you meant.

Mr. **Chabraja**. OK. Thank you.

In connection with your work, judge, when you were in private practice, and in connection with the handling of your own affairs, do you think that you had a good comprehension of ordinary tax concepts?

Judge **Claiborne**. Are you talking about in 1979 and 1980, or are you talking about before that? Are you talking about while I was a lawyer?

Mr. **Chabraja**. Yes, let us take them one at a time.

Judge **Claiborne**. No, I would not say that.

Mr. **Chabraja**. You do not think you had a good understanding of fundamental tax concepts.

Judge **Claiborne**. No, I do not.

Mr. **Chabraja**. All right.

Judge Claiborne. I never filled out my own return, nor for a single client in my whole life. And I did not—would you like to know how I operated as far as tax cases were concerned?

When somebody came in with a tax problem, I always sent them to someone else. I never gave anybody any advice.

Mr. Chabraja. Let us move you along in the time spectrum. Would you say that you were able to comprehend most ordinary and fundamental tax concepts by the year 1980?

Judge Claiborne. I would not say all, because I had no reason to specialize in any way, even after I was on the bench, in tax law. And so I would say the answer to that would be no.

Mr. Chabraja. Let me change the question a little bit. Instead of saying all, if I put it to you were you able to understand most ordinary, fundamental tax concepts, how would you respond?

Judge Claiborne. I think so.

Mr. Chabraja. Most concepts——

Judge Claiborne. I think, really, that if you will let me answer it in this way I can save us a lot of time: That when I had a case involving the income tax laws, two things generally happen before you ever go to trial. The first is they file pre-trial briefs. Second, you have the benefit of any motions that have been filed before the magistrate.

With the pre-trial statements, you know exactly what the issue is, and before you go in to hear this case, well, then, you set down and you familiarize yourself with the provision of the law that pertains to the case. And you educate yourself with that provision.

In the courtroom, and it is an easy thing, because very seldom are any technical matters pertaining to the law raised during the trial. They are generally always raised upon motions prior to trial and at the time the jury instructions are approved.

Most of the issues, nearly all of the issues that come up during the trial, in, say, an income tax evasion case are purely matters pertaining to evidence, whether or not the evidence is admissible or not.

Mr. Chabraja. Let me put this to you in another way, judge. Would it be fair to say that by 1980 you were very familiar with tax law and questions involving taxation? Is that a fair statement?

Judge Claiborne. No, I do not think that would be a fair statement.

Mr. Chabraja. All right.

Judge Claiborne. I have explained it to the best of my ability. I would be familiar——

Mr. Chabraja. Judge, I do not want your explanation. I just wanted to know whether or not that is a fair statement.

Judge Claiborne. No, it is not a fair statement.

Mr. Chabraja. All right. Let me read to you your trial testimony from page 3238, the transcript of your first trial. You recall testifying under oath at your first trial, do you not?

Judge Claiborne. I sure do, yes.

Mr. Chabraja. All right. On page 3238, beginning at line 9, were you asked these questions and did you give these answers?

Question. "Now, would it not be fair to say, sir, that by 1980 that you were very familiar with tax?"

Answer. "That I was very what?"

QUESTION. Very familiar with tax law and questions involving taxation."

ANSWER. "Oh, yes. I would say that I would be able to comprehend most of the ordinary tax problems."

Do you recall giving that——

Judge CLAIBORNE. Oh, yes, yes. I was familiar with, you know, the provisions of the tax law that came before me, and I comprehended them.

Mr. CHABRAJA. All right. And you certainly understood the difference between capital gain and ordinary income, did you not?

Judge CLAIBORNE. I know the difference in that, yes.

Mr. CHABRAJA. You knew then and you know now?

Judge CLAIBORNE. I knew that before I went on the bench.

Mr. CHABRAJA. OK. And you knew the difference between being a cash-basis taxpayer and being an accrual taxpayer, did you not?

Judge CLAIBORNE. No, I cannot honestly say that I did.

Mr. CHABRAJA. You did not know the difference about that?

Judge CLAIBORNE. I do not think so.

Mr. CHABRAJA. Do you know whether you were a cash-basis taxpayer?

Judge CLAIBORNE. I knew I was on a cash basis.

Mr. CHABRAJA. OK. You knew that. And you know the difference between book value and fair market value, do you not?

Judge CLAIBORNE. I knew that, yes.

Mr. CHABRAJA. All right. These sorts of principles were things well within your grasp, were they not?

Judge CLAIBORNE. Yes. I was familiar with it, and I knew about it.

Mr. CHABRAJA. And you understood that money received from the collection of accounts receivable was income?

Judge CLAIBORNE. I sure did.

Mr. CHABRAJA. In the tax year 1979, my understanding is that you received legal fee income of $41,072.93; is that right?

Judge CLAIBORNE. That is correct.

Mr. CHABRAJA. All right. And if you will look at your income tax return, which I believe for that year is exhibit 15.

Judge CLAIBORNE. Yes. I have it before me.

Mr. CHABRAJA. If I can direct your attention to schedule C, how much of that $41,072.93 is reported on schedule C of your income tax return?

Judge CLAIBORNE. $22,332.87 was reported on schedule C.

Mr. CHEBRAJA. OK. Now, the income that you received in the year 1979 came from two sources, did it not? The income you received came from two different people?

Judge CLAIBORNE. Yes—two different people?

Mr. CHABRAJA. Two different people.

Judge CLAIBORNE. Yes.

Mr. CHABRAJA. And who were those people?

Judge CLAIBORNE. James Brown and Annette Quintana.

Mr. CHABRAJA. All right. Do you recall that you received five checks from Annette Quintana?

Judge CLAIBORNE. I do not recall the number, but I did receive——

Mr. Chabraja. You do not remember how many checks there were?

Judge Claiborne. I think five. Each $1,000, as I recall.

Mr. Chabraja. All right. And do you recall that you received about nine checks from James Brown?

Judge Claiborne. Yes, that would be right.

Mr. Chabraja. For a total of 14 checks.

Judge Claiborne. Possibly.

Mr. Chabraja. All right. Do you recall that you cashed at casinos 8 out of the 14 checks?

Judge Claiborne. No, I never counted a number, but that may well be.

Mr. Chabraja. Well, you have a recollection that you cashed any number of those?

Judge Claiborne. Oh, sure, yes.

Mr. Chabraja. To my understanding, during the entire time that you had been in private practice, from the time you got out of the service until you went on the bench in the fall of 1978, you had never cashed a fee check?

Judge Claiborne. I think that would be correct.

Mr. Chabraja. All right. In your——

Judge Claiborne. I do not recall ever having cashed one.

Mr. Chabraja. It had been your practice to always deposit fee checks into your account or accounts at your bank?

Judge Claiborne. That is correct.

Mr. Chabraja. And you did that as a consistent practice to make sure that every single penny that came in is reported to the Internal Revenue Service, did you not?

Judge Claiborne. Well, I do not think I had that in mind. I mean, that was the way Mr. Wright suggested in the very beginning that he handle my account, and I do not really recall having any thoughts at the time about that is a good idea, we will do it, you know.

Mr. Chabraja. Let me——

Judge Claiborne. I am sure it was his idea.

Mr. Chabraja. All right. Let me direct your attention, Judge Claiborne, to page 3280 of the transcript of your first trial where you were asked the question about this practice, and I refer to line 13.

The question put to you under oath was: "All right. And that is a standard way, in your experience, that businessmen do business, is it not?"

The answer: "When I was in business, that is the way I did it. I did it for the very purpose that I wanted my books and records to show every penny that came through my office, and it did."

Do you recall giving that?

Judge Claiborne. Yes, and that is true.

Mr. Goodman. Mr. Chairman, I would object to that question and move that it be stricken. It is not used for the purposes of impeachment because it does not impeach and it is not a prior consistent statement. It has nothing to do as far as the relative testimony of the witness.

Mr. Chabraja. Mr. Chairman, the judge just denied that very answer in his prior testimony.

Mr. GOODMAN. I submit that the record would suggest the contrary. There is a specific question that is being asked, he answers it, and then there is a general statement being read. And I submit that is improper.

Mr. CHABRAJA. I think the record will ultimately reveal the contradiction in the prior answer and the one I just read.

The CHAIRMAN. Mr. Goodman, it does not seem to me that this creates a very serious problem, and I am going to let Mr. Chabraja go forward if, as he says, he is prepared to make the record perfectly clear.

Mr. CHABRAJA. As a matter of fact, Judge, you would agree with me, would you not, that cash transactions, when checks are cashed rather than deposited, those transactions are much easier to conceal than transactions where a check is deposited?

Judge CLAIBORNE. I would not agree with that. I would say check—I mean cash transactions would be much easier to conceal. But check transactions, I do not think they are any easier to conceal than any other transaction.

Mr. CHABRAJA. I am not sure I understand the statement you just made to me.

Judge CLAIBORNE. Well, let me explain it this way: If you were to go accept cash for something, and somebody gave you cash for an article, and you stuck the cash in your pocket, it would be easier to conceal that than it would be that if you made a purchase from someone and he gave you a check for the article.

Mr. CHABRAJA. OK.

Judge CLAIBORNE. There is a record, of course, of the check.

Mr. CHABRAJA. I understand the distinction that you are making. Let us talk about those instances where you receive a check. You would agree with me that if you were of a mind to conceal that receipt of income, it would be easier to do it if the check were cashed at a casino, for example, rather than deposited in a bank?

Judge CLAIBORNE. I do not think so.

Mr. CHABRAJA. You do not think so. Do you think that if the check is cashed at a casino, your books and records leave an adequate trail of the receipt of the income?

Judge CLAIBORNE. Your own books and records?

Mr. CHABRAJA. Yes.

Judge CLAIBORNE. No.

Mr. CHABRAJA. OK. Now, you have testified that you have a recollection that you cashed a number of checks that you received in the year 1979. What did you do with all that cash?

Judge CLAIBORNE. All of that cash? Some of these checks—are you talking about the checks that I cashed at the casinos?

Mr. CHABRAJA. Yes.

Judge CLAIBORNE. Some of those checks are months between, and you spend it.

Mr. CHABRAJA. Did you walk around with it in your pocket?

Judge CLAIBORNE. Sure, I walk around with it in my pocket.

Mr. CHABRAJA. What kind of money do you carry in your pocket?

Judge CLAIBORNE. What?

Mr. CHABRAJA. What kind of money do you carry in your pocket?

Judge CLAIBORNE. Are you talking about today?

Mr. Chabraja. No, I am not talking about today. I am talking about while you were sitting as a U.S. district judge.

Judge Claiborne. I would say that I walked around many, many times with as much as $1,500 in my pocket, sometimes maybe $2,000.

Mr. Chabraja. Well, there was a check in early 1980 that you received from a Mr. DeRoy in the amount of $37,500. Do you remember that one?

Judge Claiborne. Oh, sure.

Mr. Chabraja. And you cashed that one at a casino. Do you remember that?

Judge Claiborne. I sure do.

Mr. Chabraja. What did you do with that kind of money?

Judge Claiborne. I deposited $20,000 of it in my account. I remodeled the home that I had just moved into with the remainder.

Mr. Chabraja. Now, you moved into that home, as I recall your testimony, about April 1, 1980.

Judge Claiborne. No. I moved into it in July. I believe August or September of—July or August of that year I moved into where I am living now.

Mr. Chabraja. Maybe I misunderstood your testimony. I thought when we were talking about the year 1980 yesterday, that you left your home right about April 1 and moved into a new residence.

Judge Claiborne. I did.

Mr. Chabraja. OK. There was an interim residence?

Judge Claiborne. I bought a home in another part of town. And then I bought this place, primarily, at first with the idea of it being an investment. They were building townhouses in this locality. And I eventually moved into it and sold the other home.

Mr. Chabraja. OK. But that is not—the April 1 home is not the one that you improved?

Judge Claiborne. No.

Mr. Chabraja. OK. It was the property that you bought later in the summer?

Judge Claiborne. That is correct.

Mr. Chabraja. Where you resided up until the time you were incarcerated.

Judge Claiborne. The one you are talking about is the house located at 810 Pinehurst.

Mr. Chabraja. So you started these improvements late summer or early fall?

Judge Claiborne. I recall I started them in August or the first week in September, and they continued for a long period of time.

Mr. Chabraja. My memory is that you got the DeRoy check early in the year.

Judge Claiborne. I do not think so. I think I received it on——

Mr. Chabraja. In the fall?

Judge Claiborne. August 15, 1980, as I recall it.

Mr. Chabraja. Your memory is better than mine.

So your testimony is that after cashing a check for $37,500, you turned around and put $20,000 of it into a bank.

Judge Claiborne. Yes. I deposited $20,000 of it into my account.

Mr. Chabraja. And that you spent the remainder by giving it to various tradesmen for work done at your house?

Judge Claiborne. Yes. And, you know, buying material and those things.

Mr. Chabraja. Why would you do that rather than pay by check?

Judge Claiborne. Very easy. The simple answer is that most of the workmen that I used came out of what was called a labor pool in Las Vegas, and I would secure whoever I needed from this labor pool And they would send them, and these workmen, most of whom were transient—we have a tremendous transient population in Las Vegas. They are transient, and each day they would want their pay in cash each day. That is primarily why I did it.

Mr. Chabraja. Did you get receipts?

Judge Claiborne. No. I do not think I ever received any receipts from any of them.

Mr. Chabraja. Judge, tell me something. How do you ever establish your tax basis in your home if you have paid by cash and you do not have receipts?

Judge Claiborne. I will have a problem.

Mr. Chabraja. I guess you will.

Judge Claiborne. I will have a problem.

Mr. Chabraja. You maintained a diary, did you not, of the receipt of legal fee income?

Judge Claiborne. Yes, I did.

Mr. Chabraja. All right. And House Managers Exhibit 22 is a photocopy of your diary, is it not?

Judge Claiborne. That is correct.

Mr. Chabraja. And as I look at it, it looks to me like your entries begin some time in 1976.

Judge Claiborne. That is correct.

Mr. Chabraja. And continue on through May 1982.

Judge Claiborne. That is correct.

Mr. Chabraja. And is it true that each and every item of fee income you received in the years 1979 and 1980 is chronicled in this diary?

Judge Claiborne. Yes, I believe so.

Mr. Chabraja. All right.

Judge Claiborne. Yes, I believe so.

Mr. Chabraja. Where did you keep this diary?

Judge Claiborne. At home in my desk.

Mr. Chabraja. And this was always a document maintained at home rather than at the office?

Judge Claiborne. Well, I never retained it in my office at all. I kept it at home. I had an office in my home with everything. I am talking about law books, a typewriter, desk, and so forth, because I did a lot of work in my home. And I kept the book in my desk drawer.

Mr. Chabraja. Did you keep a lock on your desk drawer?

Judge Claiborne. No, I did not.

Mr. Chabraja. Did you have a filing cabinet in addition?

Judge Claiborne. Yes, I did.

Mr. Chabraja. But you did not file it in the filing cabinet?

Judge Claiborne. No, I did not. I kept it in my desk drawer. I had the regular files in my filing cabinet. It was just a two-drawer cabinet.

Mr. CHABRAJA. Now, were the entries in this book made reasonably contemporaneous with the receipt of income?

Judge CLAIBORNE. No. Well, no, they were not.

Mr. CHABRAJA. All right.

Judge CLAIBORNE. I mean, it was a haphazard system. But when I received a check, I would write down—or when I received a fee, I would write down the date, the individual from whom I received it, the amount of the check, and the date that I received it. And I had an envelope in my desk drawer in my chambers, the desk in my chambers, and I would put these slips into an envelope. And periodically, I would take them home and put them in the drawer with this book

This was my record of what I received. I never expected that it would ever be a part of any legal proceeding. It was my way of doing it, and I already had the book so I continued to do it

From time to time, I would record them. For instance, in 1980, I had a large part of the 1979 entries had not been entered. I recall that.

Mr. CHABRAJA. Well, if I understand you, your practice was to make a slip contemporaneous with the receipt of income?

Judge CLAIBORNE. That is absolutely correct. Just what I have said

Mr. CHABRAJA. And to deposit the slip into an envelope in your chambers?

Judge CLAIBORNE. That is correct.

Mr. CHABRAJA. And from time to time, you took the envelope home and put it in with the diary?

Judge CLAIBORNE. Yes.

Mr. CHABRAJA. And you maintained the envelope there with the diary—true?

Judge CLAIBORNE. That is correct, yes.

Mr. CHABRAJA. And then from time to time, you took out the diary and the slips and made a recordation of what was on the slips in chronological order?

Judge CLAIBORNE. That is correct.

Mr. CHABRAJA. All right.

Judge CLAIBORNE. And sometimes I would put the slip in my pocket, and I have done this, I recall, in several instances. I put the slip in my pocket and have gone home and recorded it then.

Mr. CHABRAJA. OK. So sometimes the recorded entry was reasonably contemporaneous?

Judge CLAIBORNE. Yes, that is true.

Mr. CHABRAJA. After you made your record in the diary, did you dispose of the slips?

Judge CLAIBORNE. Oh, yes, always.

Mr. CHABRAJA. Now, can you tell me why you began this diary in 1976 and 1977 when you were in private practice and presumably had bookkeeping assistance at the office?

Judge CLAIBORNE. No. I cannot tell you that.

Mr. CHABRAJA. But in late 1978, 1979 and 1980 and thereafter, it served the function of enabling you to create a record of your legal fee income?

Judge CLAIBORNE. That is correct.

Mr. CHABRAJA. And that was its purpose, and that is the reason you maintained it?

Judge CLAIBORNE. That is correct.

Mr. CHABRAJA. And I take it it is your testimony that never during the years 1980 and 1981 did you ever supply a copy of this diary to either Jay Wright or to Mr. Watson?

Judge CLAIBORNE. No. I saw no need to.

Mr. CHABRAJA. Well, we will discuss that. But in connection with furnishing them information with respect to your taxable income in 1979 and 1980, you never photocopied your diary and gave them the——

Judge CLAIBORNE. No, I did not.

Mr. CHABRAJA. So Mr. Wright, in connection with the tax year 1979, did not know the details of who you received income from and the dates of the receipt, did he?

Judge CLAIBORNE. No, and he did not know in any other years.

Mr. CHABRAJA. Well, in other years, he had your bank statements, did he not?

Judge CLAIBORNE. Yes, but they do not show the——

Mr. CHABRAJA. But they showed dates——

Judge CLAIBORNE. All they showed is the deposit, and they do not show the parties they are from. All they showed is the amount of the deposit.

Mr. CHABRAJA. And it was your standing instruction to him that all deposits on your bank statements were fee income unless you instructed him otherwise?

Judge CLAIBORNE. That is absolutely correct.

Mr. CHABRAJA. OK.

Judge CLAIBORNE. In 30 years, I have never furnished him a list of the check by date and person that I received it from and the amount. He always took it from the deposit book.

Mr. CHABRAJA. OK.

Judge CLAIBORNE. Our system was that he was to consider everything, every deposit made, as income unless someone from my office directed him otherwise.

Mr. CHABRAJA. For the year 1979, he did not have those deposits available to him, did he?

Judge CLAIBORNE. 1979?

Mr. CHABRAJA. Yes, for the tax year 1979.

Judge CLAIBORNE. Oh, yes. He received the bank statements in 1979.

Mr. CHABRAJA. He did?

Judge CLAIBORNE. Yes.

Mr. CHABRAJA. For how long?

Judge CLAIBORNE. For the whole year.

Mr. CHABRAJA. Oh, he did?

Judge CLAIBORNE. Yes.

[Pause].

Mr. CHABRAJA. Let me read you from the transcript of the first trial, your testimony at page 1033, Judge, at line 21—second trial, excuse me—second trial, transcript page 1033, line 21.

While Mr. Goodman is scrambling for that, let me be certain that I understand you. Your testimony is that Mr. Wright continued to receive bank statements throughout the year 1979?

Judge **Claiborne**. My bank statements——

Mr. **Chabraja**. No, no, Judge. Just answer my question.

Judge **Claiborne**. Well, wait a minute.

Mr. **Chabraja**. Is it your testimony that Mr. Wright continued to receive bank statements from your bank throughout the year 1979?

Judge **Claiborne**. No.

Mr. **Chabraja**. When did he quit receiving bank statements?

Judge **Claiborne**. That was not your other question. In 1979, he was already getting my bank statements; they were mailed direct from the bank to his office. And that had been the practice for years and years and years. If I wanted to know what my balance was, I had to call his office. Ordinarily, his wife would send me a little note at the end of the month, telling me what my balance was so I would know what I have in my account.

This was the account at First National Bank. He continued to get those checks for some period of time, and I believe he got them for the whole year in 1979, and up until, I believe, sometime in the early part of 1980.

Now——

Mr. **Chabraja**. All right. Let's—so we didn't misunderstand each other.

Judge **Claiborne**. Now, wait a minute. There was another account, my private account, at the Pioneer Bank. And this was the account that I used in 1979 and 1980. The First National account was my business account, my prior business account. And I don't really know when he stopped getting from the First National Bank, the bank statements. I just believe that that's when he stopped getting them. But——.

Mr. **Chabraja**. Your belief is that he stopped getting them in early 1979?

Judge **Claiborne**. No. I think he stopped getting them in early 1980, in early 1980.

Mr. **Chabraja**. OK.

Judge **Claiborne**. There was no activity in that account. All he would have received in 1980 would have just been a statement showing the balance.

Mr. **Chabraja**. So really, it didn't matter whether he received it or not; there wasn't any activity in the account.

Judge **Claiborne**. There was no activity that I can remember in that account.

Mr. **Chabraja**. Don't fence with me, Judge. With respect to the account where there was activity, did Mr. Wright get the statements in 197——

Judge **Claiborne**. Oh, yes.

Mr. **Chabraja**. He did?

Judge **Claiborne**. Oh, yes.

Mr. **Chabraja**. Throughout 1979?

Judge **Claiborne**. Oh, yes. He had all of the 1979 statements; not only that, but all my receipts and invoices.

Mr. **Chabraja**. For the year 1979?

Judge **Claiborne**. That is correct. I took them to his office.

Mr. **Chabraja**. When you were sitting on the bench——

Judge **Claiborne**. That is correct.

Mr. CHABRAJA [continuing]. You made receipt for these checks, these 14 checks you received from Annette Quintana——

Judge CLAIBORNE. No. I'm talking about invoices, statements and bills of everything that I might buy. This was always what we did——

Mr. CHABRAJA. Well, let's just talk about——

Judge CLAIBORNE [continuing]. Just a minute; let me finish. When he started to prepare my tax return, I always took my invoices down to him in a great, big manila folder. And I don't know what purpose he put them to, but he asked me to do that, and I did it every year. At the close of the year, I'd bring down all invoices that I had in my office. Seventy-nine being my first full year on the bench and out of my law practice, I followed the same procedure. But he called me for the bank statements. But I voluntarily took him all receipts of things that I would buy, and I would get the receipt from him and invoices, telephone bills, power bills, those things, to him. And I did—save and except I missed two statements.

Mr. CHABRAJA. Which two?

Judge CLAIBORNE. I don't recall which two. I remember that—I do recall one of them was a December statement, because he called me and he told me that, "I do not have two statements," and he gave me the months I do recall one was December, because—I remember that, because I looked for it and I found that I had put it with the January statement, the January statement of 1980, and it actually was my 19—it was a December statement.

Mr. CHABRAJA. Let me see if I understand all of this, Judge. With respect to your bank statements, Mr. Wright, according to your testimony, continued to get directly from the bank, the First National Bank statements during the entire year 1979.

Judge CLAIBORNE. I am—that's my recollection. It might have been—that's my recollection, that he received the statement direct from First National Bank for the whole year. Now, it may well have been——

Mr. CHABRAJA. Let's—if I may, let me move on.

Judge CLAIBORNE. That's my recollection, sir.

Mr. CHABRAJA. And it is also your testimony that in any event, the First National Bank statements were of no effect, that there wasn't anything recorded in them, no further activity?

Judge CLAIBORNE. There was activity for some period of time after I first went on the bench. And I believe the only activity at that time was with reference to, for only a short period of time—this is my recollection—and then there was no activity.

I would just say that for the year 1979, there was absolutely little or no activity in that account for the whole year.

Mr. CHABRAJA. OK. And the activity in your bank accounts was at the—is it the Pioneer Bank? What was your other bank?

Judge CLAIBORNE. It was the Pioneer Bank, my personal account.

Mr. CHABRAJA. The Pioneer Bank. And that was the bank account that you were actively using in 1979.

Judge CLAIBORNE. 1979 and 1980 both.

Mr. CHABRAJA. OK. And was Mr. Wright receiving the Pioneer Bank statements?

Judge Claiborne. Those are the statements I took personally to him.

Mr. Chabraja. You took them to him personally.

Judge Claiborne. You see, those papers did not come to him personally. Those statements came to me.

Mr. Chabraja. All right. But you gave them?

Judge Claiborne. I sure did.

Mr. Chabraja. Do you recall that this is the first time you've ever testified to that?

Judge Claiborne. I don't think so.

Mr. Chabraja. All right. Now——.

Judge Claiborne. I don't think so. I think you are absolutely incorrect.

Mr. Chabraja. You think you have testified about that before.

Judge Claiborne. Well, I have testified—yes, I think I have.

Mr. Chabraja. OK. Now let me read to you from the second trial at page 1033. The question is, at line 21: "That you sent him bank records until early 1980?"

Answer. "No. I said that he quit getting my bank statements in January or February."

Question. "Of what year?"

Answer. "Of 1979.

The Court. "Seventy-nine, Judge?"

The Witness. "Yes."

Do you recall being asked those questions?

Judge Claiborne. That's just what I've said. We're talking about the First National checks that went—mailed direct to him from the bank.

Mr. Chabraja. Judge, unless I wasn't hearing right, I think you just said to me he continued to get those until early 1980.

Judge Claiborne. Well, I think he did. And I also told you I was not absolutely certain. I believe that the Judge said, "Seventy-nine or eighty?"and what did I say? "Eighty?"

Mr. Chabraja. You said 1979.

Judge Claiborne. Well, isn't there another——

Mr. Chabraja. Judge——

Judge Claiborne. Isn't there something else after that? I seem to recall saying, "Seventy-nine or eighty."

Mr. Chabraja. The Court went on to say: "I was the one that asked the question previously, and you indicated to me it was January, February of 1980. Do you mean 1979?"

You nodded affirmatively.

Judge Claiborne. Well, was there something else?

Mr. Chabraja. Left the subject matter.

Judge Claiborne. I seem to recall that I said, "I believe, eighty."

Mr. Chabraja. Well, Judge, it is fair to say you really don't recall one way or another, isn't it?

Judge Claiborne. No, but I would sure like to see the transcript. I'm not satisfied with—I trust you—not too far, though. [Laughter.;.

Mr. Chabraja. I won't comment.

[Mr. Chabraja hands document to witness.].

Judge Claiborne. No, I see that I'm right. It says, on page 1033, "that you sent him bank records until early 1980?"

"No. I said that he quit getting my bank statements in January or February."

QUESTION. "Of what year?"

And I said, "Of 1979."

And then the Court said, "Seventy-nine, Judge?"

And then I said, "Yes."

The Court said, "I was the one that asked the question previously, and you indicated it was January or February 1980. Do you mean 1979?"

And the record says that I nodded affirmatively.

Mr. **CHABRAJA**. OK. So we can accept that, can we not, that it was 1979 when you quit sending him bank statements?

Judge **CLAIBORNE**. Do you mean the bank quit sending him the bank statements?

Mr. **CHABRAJA**. The question, Judge, that you seem to have a little trouble understanding——

Judge **CLAIBORNE**. Now, we were—the——

Mr. **CHABRAJA**. Let me read it to you The question put to you at line 21 was: "That you sent him bank records until 1980?" And that was the statement that you said, "No"——

Judge **CLAIBORNE**. No, I think you're incorrect.

Mr. **CHABRAJA**. Well, maybe you need to take another look.

Judge **CLAIBORNE**. Well, I know, but——

Mr. **CHABRAJA**. What's incorrect——the transcript or your testimony?

Judge **CLAIBORNE**. Well, they were talking about sending him bank deposits for the year 1979 up until 1980, and I was talking about the bank statements that he received direct from the bank; and that's what I had in mind.

Mr. **CHABRAJA**. So when you answered this question, you were confused?

Judge **CLAIBORNE**. No, I wasn't confused. I don't think I was confused. I misinterpreted, in all probability, the--I didn't misinterpret the question. What happened was I gave the wrong answer.

Mr. **CHABRAJA**. All right. So it is your testimony, if we are to accept it today, that for the year 1979, Mr. Wright had your bank deposit records from the Pioneer Bank because you gave them to him?

Judge **CLAIBORNE**. I know that I gave them to him.

Mr. **CHABRAJA**. OK. Now, let's turn together to House exhibit 17. You have that in front of you, I take it. You are familiar with that document, are you, Judge?

Judge **CLAIBORNE**. Yes, I am.

Mr. **CHABRAJA**. And in fact, you are the author of it?

Judge **CLAIBORNE**. That's correct.

Mr. **CHABRAJA**. And my memory is that you testified that you sent that document to Jay Wright in late February or early March of the year 1980.

Judge **CLAIBORNE**. Yes, I think the latter part of February or the first part of March.

Mr. **CHABRAJA**. OK. And you are asking Jay to give some information with respect to your earnings for 1978, 1979, and 1980, to a mortgage company, are you not?

Judge **CLAIBORNE**. Yes.

Mr. Chabraja. All right. And you tabulate for him your fees for 1979, and you indicate in the second full paragraph as follows, and I quote: "Here is the tabulation taken from my deposits and authentic." And then you set out the deposits that you believe to be fee income; is that not accurate?

Judge Claiborne. That is correct.

Mr. Chabraja. All right. Why do you have to give Jay Wright your deposits, when he already has them, according to your testimony?

Judge Claiborne. I don't think he—he didn't have them.

Mr. Chabraja. Judge, maybe you and I haven't been in the same place the last 10 minutes. I thought you just got done telling me that you gave Jay Wright your Pioneer Bank deposits for the entire year 1979, but for 2 months, one of which you remember to be December.

Judge Claiborne. I did.

Mr. Chabraja. Yes? When did you give them to him?

Judge Claiborne. I am guessing that I gave them to him at the time that—either the time that I went down to sign the extension, or a week earlier, maybe a week or two earlier than that.

Mr. Chabraja. So your testimony is, if I understand you, that you gave Jay Wright your bank statements sometime in April 1980?

Judge Claiborne. That would be my best recollection.

Mr. Chabraja. But certainly, I guess, from your testimony when you wrote the letter that is exhibit 17, Jay Wright was not in possession of your deposits?

Judge Claiborne. I am sure he wasn't.

Mr. Chabraja. And you felt the need to tell him about that, about which of your deposits were fee income?

Judge Claiborne. Well, I just told him that I had—these were from my deposits and was the income to support my request that he write a letter saying that my outside income from my private practice had been in the amount of $46,000, I put, I believe, on the——

Mr. Chabraja. OK. Why didn't you, Judge, when you were writing this letter to Mr. Wright, just go back to your diary and the slips and find the correct numbers and give them to him? Why didn't you do it that way?

Judge Claiborne. Well, I've explained it so many times that——

Mr. Chabraja. One more time, Judge.

Judge Claiborne. I had moved from my home on Rancho Road in Las Vegas, NV, to 810 Pinehurst, and I had to have from—the Stanwell Mortgage Co. had wanted a statement from my account that I had lost or could not find, had misplaced, the envelope that I had put my slips in, and they had not been yet recorded in my book, and the envelope I could not locate.

In the moving process to Rancho, I found them and recorded them in my book.

Mr. Chabraja. OK. If I understood you, in late——

Judge Claiborne. So when I wrote this letter to him, I could not find my slips, so I did the best next thing. And so I went through my bank statements, and I looked at what I thought was deposits of fees that I had received and sent them to him.

Mr. CHABRAJA. Let's stop for a moment. How is it that you lost an envelope that you kept in your desk drawer with the diary?

Judge CLAIBORNE. Well, I had obviously left it on top of my desk, because when we found it, we found it with some other material, with an insurance policy and two, three letters.

Mr. CHABRAJA. It was under the pile?

Judge CLAIBORNE. It was under the pile, but somehow, all of it had gotten into a folder.

Mr. CHABRAJA. All right. In the absence of your slips and an updated diary, apparently when you wrote exhibit 17, you did the best you could to reconstruct what your fee income was for the year 1979?

Judge CLAIBORNE. That's correct.

Mr. CHABRAJA. And you knew it was in the neighborhood of $45,000, didn't you? Is that what helped you reconstruct——

Judge CLAIBORNE. No. I can't say that I——

Mr. CHABRAJA. You can't say that——

Judge CLAIBORNE [continuing]. Before that I testified——

Mr. CHABRAJA. Well, as you were sitting down here with your deposits in the preparation of exhibit 17, this handwritten note, you apparently had some feeling about the order of magnitude of the fees you had received.

Judge CLAIBORNE. I guess. I don't know.

Mr. CHABRAJA. You guess that's a fair statement?

Judge CLAIBORNE. Well, I would guess it is. It would seem—it would seem——

Mr. CHABRAJA. You had a sense that it was in the $45,000 neighborhood?

Judge CLAIBORNE. No, I did not, you know, until I added it up; I had no——

Mr. CHABRAJA. Well, all right. Then, apparently, you didn't have a feel for the magnitude of those fees; you needed to go through this process of going through your bank deposits and adding it up before you had any sense of the magnitude of the fee income you had received; is that correct?

Judge CLAIBORNE. Yes.

Mr. CHABRAJA. That's the way you did it?

Judge CLAIBORNE. Well, I think really, what I did—I think really, the way I did it, I went through my bank statements, and I started picking out what I thought was income. And when I got through, and I added them up, and I think I said, "This is enough," you know.

Mr. CHABRAJA. It seemed right to you?

Judge CLAIBORNE. Well, it was enough for my purposes. I mean——

Mr. CHABRAJA. You wanted to make a good showing——

Judge CLAIBORNE. No; the loan company, I knew, would need probably some $25,000 or $30,000 in additional income, and I think that's all, really——

Mr. CHABRAJA. Well, when you say to Jay Wright, "Here is the tabulation taken from my deposits and authentic," what did you mean by that?

Judge CLAIBORNE. I meant that these items were actually moneys that I had deposited.

Mr. CHABRAJA. And you believed them to be legal fee income?

Judge CLAIBORNE. Yes, I did.

Mr. CHABRAJA. All right. Now, in an effort to reconstruct your legal fee income, how could you do it from bank deposits, when you knew full well that you had cashed 8 out of the 14 checks, and they weren't reflected in your bank statements?

Judge CLAIBORNE. Well, I knew—I knew that there were other moneys, checks that I had cashed—I didn't know the exact amount—but I knew that.

Mr. CHABRAJA. But certainly, your bank statements weren't going to be a very good source for telling you what your fee income was in 1979?

Judge CLAIBORNE. Well, it was going to be enough. I knew that I could find—I figured it would find me enough in my bank statement that would——

Mr. CHABRAJA. Satisfy the mortgage company.

Judge CLAIBORNE [continuing]. Justify the loan company--I mean, satisfy the loan company. That's what I'm saying.

Mr. CHABRAJA. All right. So we have misplaced slips and diary, and we also have what is bound to be an inaccurate calculation from deposits because you know that you cashed a number of items.

Isn't there an easy way to find out exactly what your fee income was for 1979 at that point?

Judge CLAIBORNE. Wasn't there an easier way?

Mr. CHABRAJA. Yes. Wasn't there a real easy way?

Judge CLAIBORNE. I don't know what it would have been.

Mr. CHABRAJA. How about a telephone call to Annette Quintana, and say——

Judge CLAIBORNE. Who?

Mr. CHABRAJA [continuing]. "Annette, how much money did you give me in 1979 for fee income?" Wasn't that a good method?

Judge CLAIBORNE. Well, yes, that would be—that would get part of it.

Mr. CHABRAJA. How about another call to Jim Brown and say, "Jim, how much did you give me in 1979?" That would get the other part of it, wouldn't it?

Judge CLAIBORNE. Well, I know what he would say.

Mr. CHABRAJA. What would he say?

Judge CLAIBORNE. He'd say, "Hell, I don't know."

Mr. CHABRAJA. And you'd say, "Could you check it for me, Jim? I lost my records." And he was a good friend of yours, and he'd do that, wouldn't he?

Judge CLAIBORNE. Well, that didn't occur to me.

Mr. CHABRAJA. That didn't occur to you?

Judge CLAIBORNE. No, it didn't occur to me. You know it didn't occur to me.

Mr. CHABRAJA. It didn't really occur to you that you needed a very accurate figure in connection with exhibit 17——

Judge CLAIBORNE. Of course not.

Mr. CHABRAJA [continuing]. Because all you needed to do was ballpark it.

Judge CLAIBORNE. No, I wasn't trying to ballpark it. I wanted to be absolutely certain that I was giving him exactly what came from my records, what I knew that I had collected. And the only thing that I wanted to do was to have enough to satisfy the loan company.

I think what they told me was that, "We're going to need about $20,000 more income to justify your loan."

Mr. CHABRAJA. OK. By the way, you also have an item down there at the bottom of the page that purports to be your 1980 fee income, at least through the date of this letter. Where did you get that 1980 figure?

Judge CLAIBORNE. From a deposit of January 16.

Mr. CHABRAJA. OK. And you got that from your deposit records, did you?

Judge CLAIBORNE. Obviously.

Mr. CHABRAJA. OK. Now, help me out. Could you turn back to exhibit 22, which is your diary, and you turn to the "Income" item received on January 4, 1980. I have a different number.

Judge CLAIBORNE. What page are you, sir?

Mr. CHABRAJA. Well, it's in chronological order. I think you'll——

Judge CLAIBORNE. March 20?

Mr. CHABRAJA. No. I've got one January 4, 1980, from Pete Echeverria.

Judge CLAIBORNE. Oh—42,000——

Mr. CHABRAJA. Four fifty-two-point-thirty-four. And that check, as I recall, was deposited to the Pioneer Bank. So you must not have been looking at your bank deposit when you put down on exhibit 17 that you had received the $41,000 fee.

They are not the same, are they?

Judge CLAIBORNE. No.

Mr. CHABRAJA. They're close, but they're not the same.

Judge CLAIBORNE. I think I——

Mr. CHABRAJA. So maybe with respect——

Judge CLAIBORNE. I didn't—I'm sure I didn't take that off the deposit.

Mr. CHABRAJA. Pardon?

Judge CLAIBORNE. I'm sure the $41,000 didn't come off the deposit.

Mr. CHABRAJA. All right. Now, we are certain it is not off the deposit, but instead you had some general memory of the amount of the fee, and you put down $41,000.

Judge CLAIBORNE. I don't know—some basis for it—I would have had some basis for it, or—I'm sure that that's the Echeverria item.

Mr. CHABRAJA. Yes, but your earlier statement that these items are taken from your deposits and are authentic isn't quite true, is it?

Judge CLAIBORNE. It wouldn't be true for the 1980, no.

Mr. CHABRAJA. OK. And acting on exhibit 17, you know that Joseph Wright, at your request, sent letters to three different mortgage companies.

Judge CLAIBORNE. Yes.

Mr. CHABRAJA. And you can find those——

Judge CLAIBORNE. Oh, they're there, yes.

Mr. CHABRAJA [continuing]. As House exhibits 18a, 18b, and 18c.

Judge CLAIBORNE. That is correct.

Mr. CHABRAJA. And did you receive a copy of exhibit 18a at or about the time it was written?

Judge CLAIBORNE. I may have received—it seemed to me that I received a copy of the March 7 letter to Stanwell Mortgage Co. I either received it, or I saw it somewhere. It may well be that I saw it at the mortgage company. I don't know. But that is firmly in my mind, that I saw this letter.

The other two letters, which are identical, I don't think I ever received copies of those.

Mr. CHABRAJA. You don't think Mr. Wright copied you with the May 22 letters which are House exhibits 18a——

Judge CLAIBORNE. No, I do not. I don't think I received copies of that letter, or the First Western—or the First National Bank letter—either one.

The CHAIRMAN. Mr. Chabraja, it is now 11 o'clock, and we have been going for over an hour and a half. I think it might be an appropriate time to take about a 10-minute recess.

The committee will stand in recess for 10 minutes.

[Short recess.]

The CHAIRMAN. The committee will come to order.

Mr. CHABRAJA. Judge, one of the points that we covered about which you were in concurrence, and that is that in 1979, the information that Jay Wright had from you with respect to your legal fee income was a number—it was a number; he didn't have the underlying detail, that is, who you received fee income from, the dates of receipt, or the amounts of the underlying checks. Is that true?

Judge CLAIBORNE. The total amount.

Mr. CHABRAJA. That's right.

Judge CLAIBORNE. Yes.

Mr. CHABRAJA. That's what he had, a total.

Judge CLAIBORNE. That's correct

Mr. CHABRAJA. So we can clear up a problem that arose earlier in this hearing. Annette Quintana testified that she went to Jay Wright's office and told Jay Wright that she had given you $5,000 worth of fee income on the Sarno matter, and left some indication that her return and yours would be cross-checked. Do you recall that testimony; you were sitting here.

Judge CLAIBORNE. I recall it.

Mr. CHABRAJA. All right.

Judge CLAIBORNE. I may not have heard it all. I don't hear a lot of the testimony.

Mr. CHABRAJA. If we accept that statement as true—that is, that Annette Quintana told Jay Wright about $5,000 worth of fee income that she had given to you during the year 1979—he would not be able, from the information that you gave him, to ascertain whether that statement is true or false, would he?

Judge CLAIBORNE. I would presume that—and I am rather surprised at that event—I would presume that he would do exactly what he had always done. If he secured information of any kind, he invariably would call me in and say, "What about this?" "What about that?" And if Annette told him that, I'm surprised he didn't call and say, "Harry, is this in this figure? Is there something left out, or is it in here?"

Mr. **Chabraja**. Well, he asked you, did he not, if the figure was complete that you gave him?

Judge **Claiborne**. No, he did not say that.

Mr. **Chabraja**. He accepted the figure?

Judge **Claiborne**. Certainly, he accepted it.

Mr. **Chabraja**. Did he ask you if there was anything else?

Judge **Claiborne**. Well, I've explained before, at the time that I gave him—are you talking about the letter?

Mr. **Chabraja**. Yes.

Judge **Claiborne**. At the time that I gave him the letter, he didn't ask me if there was anything else. Of course——

Mr. **Chabraja**. All right. But apart from——

Judge **Claiborne** [continuing]. But he did on May 1.

Mr. **Chabraja**. Apart from checking with you personally, certainly the information coming from Annette Quintana that she'd given you $5,000 was meaningless information to him; there's no way he could check it out based on——

Judge **Claiborne**. Oh, I don't know about that. That's your conclusion, and you are entitled to it. I mean——

Mr. **Chabraja**. Well, no. I want yours, Judge.

Judge **Claiborne**. I don't have a conclusion on it.

Mr. **Chabraja**. Did he have some information that he could check that against, to see——

Judge **Claiborne**. Yes. I just told you the information that I would have; I'm very surprised that he didn't call me and say, "Is this, then, the $41,000 you gave me, or not?"

Mr. **Chabraja**. Now, I heard you on that, and I want you to answer my question. My question is, apart from talking to you, could he check anywhere to determine whether the Quintana money was in the figure that you gave him?

Judge **Claiborne**. No.

Mr. **Chabraja**. OK.

Judge **Claiborne**. I answered that before.

Mr. **Chabraja**. I didn't hear you; I'm sorry.

We were discussing, before the recess, exhibit 17, and you testified that you were putting that 1979 fee income figure together from your deposits, and you got up to $46,000, and as I understand it, you stopped; you said, "Well, that's enough."

Judge **Claiborne**. No, that's not what I said.

Mr. **Chabraja**. What did you say?

Judge **Claiborne**. I said that I added it up, and it was over the amount that I really needed, and that's all I was concerned about.

Mr. **Chabraja**. To satisfy the mortgage company.

Judge **Claiborne**. Yes.

Mr. **Chabraja**. And you knew full well that you didn't have the cash transactions in that figure.

Judge **Claiborne**. I've told you that. I answered.

Mr. **Chabraja**. All right. So your feeling was that your income was at least $45,000 for the year 1979.

Judge **Claiborne**. Yes, that was my feeling at that time, yes.

Mr. **Chabraja**. OK. Now, there came a time, did there not, when, according to your prior testimony, you found your slips for 1979?

Judge **Claiborne**. Yes.

Mr. **Chabraja**. And when was that?

Judge **Claiborne**. When I was unpacking everything in my den at my new home, when I put my desk and a few articles that I brought from my office.

Mr. **Chabraja**. And this was right around the first of April that you moved?

Judge **Claiborne**. Yes, I think so. That would be close, I'm sure.

Mr. **Chabraja**. OK.

Judge **Claiborne**. Maybe—it would be close, I think.

Mr. **Chabraja**. All right. And you sat down, then, when you found your slips, and had occasion to record them into your diary? Is that what happened?

Judge **Claiborne**. I think I recorded them at a later time than that.

Mr. **Chabraja**. OK.

Judge **Claiborne**. I found them; I put them in the same drawer that I usually put them in, and I next saw them—next used them—on the morning that I wrote Mr. Wright the letter and enclosed the check, and——

Mr. **Chabraja**. This is the morning of April 11?

Judge **Claiborne** [continuing]. Would be probably April 11—and I don't remember how soon after that I recorded them, but I believe within a reasonable period of time.

Mr. **Chabraja**. And you testified on direct examination, didn't you, that on April 10, you got a telephone call from Mr. Wright?

Judge **Claiborne**. Yes.

Mr. **Chabraja**. And I have the transcript, and you said that Mr. Wright called and he said, "I want your W-2 and a check for $8,000," and he also said that, "We have to make application for an extension." Is that correct?

Judge **Claiborne**. Yes, I think that's the substance of his——

Mr. **Chabraja**. All right. And then, you set about, according to your testimony, preparing what has been marked and—it was marked as House exhibit 36 and offered into evidence by your counsel during the defense case. Do you want to turn to exhibit 36? OK?

Judge **Claiborne**. Yes, I have it.

Mr. **Chabraja**. All right. In the very first paragraph of that letter, you respond to Mr. Wright's request by enclosing the $8,000 and the W-2 form as requested; right?

Judge **Claiborne**. That's correct.

Mr. **Chabraja**. All right. Now, prior to writing this letter, I believe your testimony is you got out the slips, and you tallied them; is that correct?

Judge **Claiborne**. That's correct.

Mr. **Chabraja**. And you came up with the number $41,073.93?

Judge **Claiborne**. Yes.

Mr. **Chabraja**. And you put that information in this letter of April 11?

Judge **Claiborne**. That is correct.

Mr. **Chabraja**. All right. And according to your testimony, this information was not solicited by Mr. Wright, but something you just volunteered?

Judge CLAIBORNE. I'm not clear whether that I volunteered, or whether it was—that he may have said at the time, "What other income did you have? Would you give me a figure?"

Mr. CHABRAJA. You didn't recall that yesterday when you were testifying—or, excuse me, on Friday—but now, you want to think about the possibility that Mr. Wright asked you to supply this information as well.

Judge CLAIBORNE. No, I don't want to think about the possibility of it. You cannot in a million years—I mean, after 3 years—remember exactly what somebody told you over the telephone. My recollection is, of what he said was, he said, "We've got to prepare an extension, and I need $8,000."

Mr. CHABRAJA. It sounds like the extension was already prepared, beceuse he knew exactly what he needed.

Judge CLAIBORNE. I assumed that, but I did not know until that time that earlier, he had called and gotten the amount from the W-2 from Ms. Ahlstrom. I did not know that. So apparently, he already had——

Mr. CHABRAJA. The application filled out?

Judge CLAIBORNE. Yes. But I did not know that. I thought he was going to do it.

Mr. CHABRAJA. And at that point he didn't have any need, at least for the time being, for your outside income, though?

Judge CLAIBORNE. I don't think so.

Mr. CHABRAJA. OK. So this looks to me like it was sort of su responte that you furnished this information; is that a fair characterization?

Judge CLAIBORNE. I really don't know. It may well have been, because I may—because he said he was going to prepare an extension, I knew he would need all the information.

Mr. CHABRAJA. All right. In any event, your recollection on that subject matter is not very clear.

Judge CLAIBORNE. Well, it's rather clear, but not—I don't remember exactly what he said or what I said.

Mr. CHABRAJA. Give it to me as best you can recall now. We've fenced about this. Give me your straight recollection now.

Judge CLAIBORNE. Well, my recollection is that he called me, and he said, "Harry, we're going to have to prepare an extension," or file an extension, and I said, "OK." And he said, "Bring me down your W-2, a check for $8,000."

That's what I recall that he said.

Mr. CHABRAJA. OK.

Judge CLAIBORNE. And I do not recall whether or not he asked for any other information.

On the other hand, it would not be like him not to ask for other information, so I just really don't know.

Mr. CHABRAJA. All right. Let's examine once again exhibit 36. I see that you make no reference in exhibit 36, your letter of April 11, 1980, to the prior handwritten note you had sent to Mr. Wright showing your income as over $46,000.

Judge CLAIBORNE. No, I did not.

Mr. CHABRAJA. All right.

Judge CLAIBORNE. I mean, I wrote the other letter for the purposes of getting him to write the loan company. It wasn't given to him for income tax purposes or to prepare my income tax return from, or any other thing. And I certainly didn't anticipate that he would use it for that purpose.

Mr. CHABRAJA. Is your view of this that you have to be less careful when you are giving him information to send to mortgage companies than——

Judge CLAIBORNE. What's that?

Mr. CHABRAJA. Well, I want to understand your testimony. Is it your view that you need be less careful when you are asking him to send the information to mortgage companies than when you are asking him to send the information to the Internal Revenue Service?

Judge CLAIBORNE. Absolutely.

Mr. CHABRAJA. Yes?

Judge CLAIBORNE. Yes. I would be far more careful of furnishing information for my income tax return than I would in any other thing.

Mr. CHABRAJA. You are inclined to be more casual when you are seeking financing at financial institutions about the accuracy of the information you'd supply?

Judge CLAIBORNE. Not casual—you know.

Mr. CHABRAJA. Just less careful.

Judge CLAIBORNE. Not as careful as when I prepare my income tax return or give information to my accountant.

Mr. CHABRAJA. But certainly, when you wrote exhibit 36, you were attempting to correct any impressions that Jay Wright had from the earlier letter you sent to him?

Judge CLAIBORNE. No, I wasn't trying to correct any impression as—absolutely, when I wrote this, I did not take into consideration the prior letter that I wrote.

Mr. CHABRAJA. All right. That's a matter that had left your mind.

Judge CLAIBORNE. It certainly had.

Mr. CHABRAJA. All right. Well, after you had had the letter of April 11 delivered to Jay Wright, he wrote two letters to mortgage companies, using the $46,000 figure. And we find those at 18b and 18c of this manual. Did you receive copies of those?

Judge CLAIBORNE. Those are the two I said I don't think I received.

Mr. CHABRAJA. OK.

Judge CLAIBORNE. I may have received the first one—at least, I saw it. Let's put it that way. But the other two, I don't think I ever received or saw.

Mr. CHABRAJA. It didn't trigger any discrepancy in your mind between the figure you allegedly gave Jay Wright in the April 11 letter and the figures he was sending out to the mortgage company——

Judge CLAIBORNE. No, it would not have.

Mr. CHABRAJA [continuing]. A month and a half later?

Judge CLAIBORNE. If I had seen them, it wouldn't have triggered any.

Mr. CHABRAJA. OK. Now, we heard you testify that you dispatched Judy Ahlstrom on the morning of April 11 to deliver

House exhibit 36, the W-2 and the $8,000 check. Do you recall doing just that?

Judge CLAIBORNE. Oh, yes.

Mr. CHABRAJA. And you are quite confident she in fact delivered it at Jay Wright's professional office?

Judge CLAIBORNE. She says she did, and I know she did.

Mr. CHABRAJA. You know she did?

Judge CLAIBORNE. I know she did if she says she did.

Mr. CHABRAJA. Well, you have even a better way of knowing that, don't you, Judge?

Judge CLAIBORNE. That she delivered it?

Mr. CHABRAJA. Yes. Isn't it your testimony that you know as a matter of fact that it was delivered, wholly apart from Judy Ahlstrom's testimony?

Judge CLAIBORNE. I know it was delivered because I saw it.

Mr. CHABRAJA. That's what I want. You went over there later in the day and saw it sitting on the corner of the desk, didn't you?

Judge CLAIBORNE. No; it wasn't on the corner of the desk.

Mr. CHABRAJA. Where was it?

Judge CLAIBORNE. I remember it was on the middle of his desk, in some papers.

Mr. CHABRAJA. Right there——

Judge CLAIBORNE. I recall that distinctly.

Mr. CHABRAJA. Why didn't you tell us about that on direct examination? That seems to me to be a critical fact that you omitted.

Judge CLAIBORNE. I don't recall being asked.

Mr. CHABRAJA. All right. But you have previously testified about that, haven't you, that you went over there later in the day to deliver a $2,500 check, and you saw the document, sitting there in the middle of Jay Wright's desk?

Judge CLAIBORNE. I have testified twice before concerning that, I believe, and I believe that's my testimony.

Mr. CHABRAJA. OK.

Judge CLAIBORNE. I went down to sign the estimate. He had called me later in the afternoon and said, "I need another check for $2,500." And I said, "What's that for?" and he said, "Your estimate." And I said, "Very well." I said, "I'll bring it on by on my way home." I did. And he found the letter—reached over and got the letter—and pulled the $8,000 check off of it and took the $2,500 check that I gave him and clipped them both together. So I saw the letter there.

Mr. CHABRAJA. Oh, that all happened, the whole thing, in your presence; it wasn't just a matter of the letter laying on the desk. You watched him handle the letter.

Judge CLAIBORNE. I watched him remove the check.

Mr. CHABRAJA. Now, you also testified, I believe—well, let me withdraw that.

Do you know whether Judy Ahlstrom maintained a copy of that letter in your file, in your financial file?

Judge CLAIBORNE. I did—do you mean at the time—I did not know that. But I saw the copy of the letter in my file after that.

Mr. CHABRAJA. Shortly after that?

Judge CLAIBORNE. I don't know whether it was shortly after it or—but I did see it.

Mr. CHABRAJA. My memory is you previously testified that you saw it any number of times when you went into that file.

Judge CLAIBORNE. I have seen it several times. But when I first saw it after that, I have no idea.

Mr. CHABRAJA. All right. But you saw it well in advance of the commencement of the investigation that resulted in your indictment in 1983.

Judge CLAIBORNE. Yes, I'm sure of that.

Mr. CHABRAJA. OK. You saw it in the ordinary——

Judge CLAIBORNE. I'm sure I saw it during nineteen—well, you said during——

Mr. CHABRAJA. Nineteen eight——

Judge CLAIBORNE. The investigation was going on then.

Mr. CHABRAJA. Well, let's take it year by year, then. Did you see it in 1980?

Judge CLAIBORNE. I'm sure I did.

Mr. CHABRAJA. OK. And you saw it in the ordinary course of business, just as you would enter into that file, you'd see it.

Judge CLAIBORNE. Yes, I—not in the ordinary course of business. I mean, this was my private file, and it had nothing to do with my business except my own personal finances. But I saw it a number of occasions after it was put in there.

Mr. CHABRAJA. And to the extent you needed information out of your personal financial file, you'd pick up the file, and you could see this letter?

Judge CLAIBORNE. No, that isn't true.

Mr. CHABRAJA. Well, how did you come upon it?

Judge CLAIBORNE. Well, I mean, it would be papers in the file, and all of them were, as I recall, were loose. And I would go through, if I had something I was looking for, I would go through to look at it. I would see this letter. Many times I'd go to the file, and I'd look for something and find it before—without seeing the letter. But I did see it a number of times in the file.

Mr. CHABRAJA. Let me direct your attention for a moment, Judge, to exhibit 21, House exhibit 21. This, judge, has previously been identified as a three-page sheet in your handwriting, basically, reporting various facts having to do with your tax information for the year 1979. Is that an accurate description of it?

Judge CLAIBORNE. That's correct.

Mr. CHABRAJA. All right. And it is written in your hand?

Judge CLAIBORNE. Oh, yes, it is.

Mr. CHABRAJA. OK. And I believe your testimony yesterday was—or, Friday, excuse me—that you prepared this document on or about May 1.

Judge CLAIBORNE. I am 99 percent certain that it was done May—the night of May 1.

Mr. CHABRAJA. The night of May 1.

Judge CLAIBORNE. Uh-huh.

Mr. CHABRAJA. And you are certain about that because you had had a telephone conversation earlier in the day with Jay Wright and told him that on May 6, you were leaving for Los Angeles, as I recall.

Judge CLAIBORNE. That's correct.

Mr. CHABRAJA. And—OK. And could you refresh my recollection—where did you get the information under "Earnings" that is "Private Law Practice Before Judgeship"?

Judge CLAIBORNE. How did I get this information?

Mr. CHABRAJA. Yes. Where did you get it?

Judge CLAIBORNE. Where did I get it?

Mr. CHABRAJA. Uh-huh.

Judge CLAIBORNE. Well, originally, the figure that's on here, the $54,499.92, the original source, of course, came from the Administrative Office of the U.S. Court.

Mr. CHABRAJA. The W-2 form.

Judge CLAIBORNE. The W-2 form.

Mr. CHABRAJA. What about the next item? Where did you get——

Judge CLAIBORNE. That item, I picked up from Mr. Wright.

Mr. CHABRAJA. Your testimony is that during the course of your conversation with Jay Wright on May 1, you asked him what your private law practice income was?

Judge CLAIBORNE. No, I did not.

Mr. CHABRAJA. Well, tell me how it happened.

Judge CLAIBORNE. On—sometime on May 1, Judge Browning called me, and he said, "I want you to go to Los Angeles next Monday, and I want you to try a case there, and it will be—it's a very serious case, and protracted." And he said, '.So you'd better clear your calendar for some time, but you had better call Judge Irving Hill and find out the length of the trial and make your plans accordingly."

And I said, "Very well," and I called Judge Hill, and Judge Hill told me about the case and about how long it would take to try it, and it was estimated at that time it would take some approximately 6 weeks to try.

And so then, I called Jay, and I told him, I said, "I'm being transferred to"——

Mr. CHABRAJA. You called Jay Wright.

The CHAIRMAN. Yes. I called him to tell him.

Mr. CHABRAJA. OK. Sorry to interrupt. Go ahead.

Judge CLAIBORNE [continuing]. That, "I'm being transferred to Los Angeles." And I said, "I, in all probability, will not be here if it lasts as long as they say, or conceivably, I could be down there when our return is due.,

And he said, "There's no problem with that."

I think I said, "Don't you suppose we'd better get another extension?"

He said, "We won't need to." And he said, "We'll treat it the same"—"do it the same way we did last year."

So I said, "All right."

And he said, "Come by," and he said, "before you leave." He said, "When are you leaving?"

And I said, "Well, I'll leave over the weekend."

He said, "Well, then, we have plenty of time," I think he said.

Mr. CHABRAJA. "Plenty of time."

Judge CLAIBORNE. What?

Mr. CHABRAJA. Your departure was scheduled, as I understand you, on the 6th of May, and——

Judge Claiborne. I think so, whatever——

Mr. Chabraja. And you are talking now on May 1, and you told Jay Wright you're leaving, and he said, "Good, that gives us"—let's see if I—"Good, that gives us a little time to get information." That was your phraseology.

Judge Claiborne. He said?

Mr. Chabraja. Yes.

Judge Claiborne. Yes, I think that's what he said.

Mr. Chabraja. That's the sum and substance of it. OK.

Judge Claiborne. And——

Mr. Chabraja. Get me into this business about the private law practice income. That's what I'm keenly interested in. What did you say to say Wright, and what did he say to you on that subject matter?

Judge Claiborne. And so, on that afternoon, he called me, and he said, "I need additional information."

And I said, "All right."

And the first thing he said was, "What was your salary as a Federal judge?"

And I said, "Jay, you have my W-2. I brought it to you."

And he said, "Oh, yeah." And he said—read it off—"Oh, yeah," he said, and paused for just a minute—he said, "Yeah, it's $54,499.92." I wrote it down on the pad, the legal pad, that I was writing on.

Mr. Chabraja. This one, right here? This is a photocopy of exactly what you wrote down at that——

Judge Claiborne. No, no—well, no, that's not it.

Mr. Chabraja. OK.

Judge Claiborne. I had a legal pad in front of me. He said he wanted certain information.

Mr. Chabraja. OK.

Judge Claiborne. When he called me, he always had points.

Mr. Chabraja. OK. So you were writing down his points.

Judge Claiborne. He'd say, "Here's what I want. And now here's what I want." And so I——

Mr. Chabraja. Don't let me make you digress. Let me steer you back to where I want you to be. After you had the conversation about your Federal judicial income, what was the next topic of conversation?

Judge Claiborne. He said, "Other income, do you have any other income?"

And I said, "You mean interest income?"

And he said, "Well, all other income." And he said, "But I'm getting to the interest income in a minute."

And I said, "OK." And I said, "Yes, the collections from private practice."

And he said, "How much?"

I said, "You have that."

And he said, "Oh, yeah, yeah." And he read off the figure.

Mr. Chabraja. What did he read to you? What was the number?

Judge Claiborne. Well, I—he must have read off $22,332.87.

Mr. Chabraja. "Must have"? Do you remember it?

Judge Claiborne. What?

Mr. CHABRAJA. Do you remember it, or are you reconstructing it? You told me, "He must have—"

Judge CLAIBORNE. I remember it from this.

Mr. CHABRAJA. OK. Only from this. You don't remember the conversation?

Judge CLAIBORNE. Well, I remember the conversation, but the exact figure, I don't remember—couldn't tell you.

Mr. CHABRAJA. But that "must have been" the number, right?

Judge CLAIBORNE. I couldn't remember—tell you—the exact figure that was on the W-2, of $54,000, but I wrote it down, and he said, "OK." He said, "Interest income." And I said, "OK," and so I wrote that down.

Mr. CHABRAJA. All right. Let's stop here with the private law practice. Your testimony is that it was Jay Wright who gave you the number, $22,332.87.

Judge CLAIBORNE. He said it, the other day.

Mr. CHABRAJA. All right.

Judge CLAIBORNE. That's what he said.

Mr. CHABRAJA. And you had given him, according to your testimony, two different numbers—one, in connection with the mortgage application——

Judge CLAIBORNE. Correct.

Mr. CHABRAJA [continuing]. Which happened in—later on, March 1, you gave him $46,000 plus.

Judge CLAIBORNE. That's correct.

Mr. CHABRAJA. All right. And your testimony is that on April 11, you had given him $41,073.93.

Judge CLAIBORNE. That was the correct amount that I——

Mr. CHABRAJA. Of the income. And you've also testified that on March 1st, you knew that your legal fee income was in the neighborhood of $45,000 at least; was that your testimony just now?

Judge CLAIBORNE. Well, I know it was, yes.

Mr. CHABRAJA. OK. So, when Jay Wright gave you this figure on May 1, when just 19 days earlier you sent him a letter stating your correct amount, you accepted his statement to you?

Judge CLAIBORNE. Yes, I did.

Mr. CHABRAJA. OK. And even though just 19 days earlier, you had been through the laborious process of tallying up your slips to arrive at the $41,000 figure, you accepted Jay Wright's articulation of a figure about half that.

Judge CLAIBORNE. It wasn't a laborious task.

Mr. CHABRAJA. It was kind of easy for you, wasn't it?

Judge CLAIBORNE. No, it wasn't. I don't see anything laborious about putting figures down and adding them up.

Mr. CHABRAJA. But it wasn't mindless, Judge; you were mindful of what you did. Not only did you add up the figures; you took the number, and you put it into a letter, according to your testimony.

Judge CLAIBORNE. Sure, yes.

Mr. CHABRAJA. And it was a letter that you saw again later in the day. And 19 days later——

Judge CLAIBORNE. Now, let me tell you something. It did not occur to me—and this is what you want to know——

Mr. CHABRAJA. It's what I want to know.

Judge **Claiborne** [continuing]. It did not occur to me that this was the incorrect number.

Mr. **Chabraja**. It didn't even occur to you.

Judge **Claiborne**. No, it did not.

Mr. **Chabraja**. When you knew that your income was in excess of $40,000, hearing this number, it didn't even occur to you——

Judge **Claiborne**. It did not occur to me.

Mr. **Chabraja**. OK. Let's go on. By the way, do you have any idea where in the whole world Jay Wright came up with such a number?

Judge **Claiborne**. Well, he—he admitted where he came up with a number——

Mr. **Chabraja**. Uh-huh.

Judge **Claiborne** [continuing]. And I don't know whether the documents are here, but the manner in which he reached it is in some document that I have seen.

Mr. **Chabraja**. Let's get back to that for a moment. I don't want to take you away from this document for a moment——

Judge **Claiborne**. But he said he——

Mr. **Chabraja**. But in any event, you accepted this figure from Jay Wright while you were preparing this document on the evening of May 1st at home; is this true?

Judge **Claiborne**. At home?

Mr. **Chabraja**. Yes. Were you at home?

Judge **Claiborne**. No, I wasn't.

Mr. **Chabraja**. You were at the office?

Judge **Claiborne**. Yes.

Mr. **Chabraja**. OK. But you did it in the evening, I think your testimony was?

Judge **Claiborne**. That's right. I went to the office, and I took my files in my house, and went to my office, and I worked on it at that time——

Mr. **Chabraja**. Worked on——

Judge **Claiborne** [continuing]. Because I had some information in my file.

Mr. **Chabraja**. But certainly, you didn't go check your diary——

Judge **Claiborne**. No, I did not.

Mr. **Chabraja** [continuing]. Or your slips.

Judge **Claiborne**. No, I did not.

Mr. **Chabraja**. And for that matter, you didn't walk out to your personal financial file in the alcove to your office and check the letter that you had written just 19 days before.

Judge **Claiborne**. No, I did not.

Mr. **Chabraja**. OK. You didn't give it any further thought.

Judge **Claiborne**. I didn't really give it any further thought.

Mr. **Chabraja**. OK.

Judge **Claiborne**. I—at all.

Mr. **Chabraja**. And then, sometime after work on May 2—I believe that's what you said, that you put in your day and sort of toward the close of business, you took exhibit 21 and went over to see Jay Wright with it.

Judge **Claiborne**. I dropped it off to him that week before I left.

Mr. **Chabraja**. OK. And your memory is that happened the next day, May 2?

Judge **Claiborne**. I'm not sure of that, but I——

Mr. **Chabraja**. It could have been a day or so later?

Judge **Claiborne**. I don't—my recollection is it happened—that I took it by the next day. It could have been later.

Mr. **Chabraja**. It could have been later. But in any event, it was sort of at the end of the business day, whether it was the next day or the following day?

Judge **Claiborne**. That's my recollection.

Mr. **Chabraja**. OK. And wasn't it your testimony that it was on this occasion, when you dropped off exhibit 21 at Jay Wright's office, that you stopped in and signed a form 1040 in blank?

Judge **Claiborne**. That is exactly correct.

Mr. **Chabraja**. And that's when that happened?

Judge **Claiborne**. Right.

Mr. **Chabraja**. All right. And just prior to that happening on May 1, you told Jay Wright that you were going to leave on or about May 6, and he said, "Well, good. That gives us a little time to get the information together before you leave."

Judge **Claiborne**. That he said?

Mr. **Chabraja**. Yes. Isn't that what he said?

Judge **Claiborne**. Yes. He said words to that effect. He said—he may have said only, "We've got a little time," or, "That'll give us a little more time to get what we need, or what I need," and so forth.

Mr. **Chabraja**. Have you—being mindful of that sequence of events, judge, that on May 1 you had the telephone conversation with Jay, and he said, "I'm glad to know that," or, "Good. It gives us some time to get the information together," that evening you got information together, and at the end of the day on the 2d of May or maybe the day after, you went over to Jay's office, you saw him, you gave him exhibit 21, and you signed a form 1040 in blank. Do I have the correct scenario? Do I have that right, or am I missing something?

[Pause.]

Judge **Claiborne**. I think that's correct.

Mr. **Chabraja**. You think that's correct.

Judge **Claiborne**. Yes, I think so.

Mr. **Chabraja**. You seem a little contemplative about it. Is there any area of doubt? I want you to identify it now.

Judge **Claiborne**. No. I—it's that—somewhat—some things are rather difficult for me to recall now——

Mr. **Chabraja**. Well, your memory seems rather precise.

Judge **Claiborne**. Well, I don't think I'm as mentally sharp, you know, as I was a while ago, but—so I hesitated to be sure, you know.

Mr. **Chabraja**. Well, let's go at it a little differently. Is there any possibility that these events occurred later than May 1 and May 2?

Judge **Claiborne**. I don't think so, because I mean, I've always been so positive about May 1, and I——

Mr. **Chabraja**. All right.

Judge **Claiborne** [continuing]. I tagged that onto the call from Judge——

Mr. **Chabraja**. And you've been consistent about that. You've testified now three times—the first trial, the second trial, and here before this honorable panel—that that conversation occured on the 1st of May. Is that true?

Judge CLAIBORNE. I am sure it did.

Mr. CHABRAJA. All right. And you've also been consistent in testifying that you did your work the evening of May 1 and that you went over to Jay Wright's office and had a brief visit with him the evening of May 2 or a day or so after that.

Isn't that also true?

Judge CLAIBORNE. Yes, that is my recollection.

Mr. CHABRAJA. All right. Now, let me direct your attention to an exhibit—it is not your exhibit—it is House exhibit 35, but it was introduced at the second trial as well, late in the second trial. It is not a new exhibit to you. And it is Jay Wright's diary, isn't it? You've heard him identify this diary at least twice now, haven't you?

Judge CLAIBORNE. Yes, I have.

Mr. CHABRAJA. All right. And why don't you turn your attention to Friday, May the——

Judge CLAIBORNE. Once.

Mr. CHABRAJA. Pardon?

Judge CLAIBORNE. Only once did I hear him.

Mr. CHABRAJA. OK. But let's look at Friday, May 2.

Judge CLAIBORNE. When is that?

Mr. CHABRAJA. Maybe I can help you some. [Perusing documents.]

Judge, with my assistance, have you been able to find Friday, May 2? Do you see that there?

Judge CLAIBORNE. Uh-huh.

Mr. CHABRAJA. Judge, do you see that apart from some early morning telephone calls, Jay Wright shows that he departed on vacation on Friday, May 2?

Judge CLAIBORNE. That's correct.

Mr. CHABRAJA. Do you have any reason to believe that this diary is in error, that judge—I mean, that Jay Wright was somehow around the afternoon of May 2 to receive you and obtain these scratch sheets and permit you to sign an income return in blank?

Judge CLAIBORNE. Yes, I do.

Mr. CHABRAJA. You have reason to believe he was there.

Judge CLAIBORNE. Yes—oh, in the afternoon?

Mr. CHABRAJA. Yes.

Judge CLAIBORNE. Yes, I don't think he was—if he was on his vacation, he wasn't there.

Mr. CHABRAJA. But this is a document that you hadn't focused on before?

Judge CLAIBORNE. This?

Mr. CHABRAJA. Yes.

Judge CLAIBORNE. No.

Mr. CHABRAJA. OK.

Judge CLAIBORNE. But I see he called my office at——

Mr. CHABRAJA. Early on in the morning, didn't he?

Judge CLAIBORNE. It looks like 9 something, or 10 something. I can't tell. It's stapled together. At 10:45 that morning, he called. So I'm pretty well sure of what occurred if he left that afternoon.

Mr. CHABRAJA. You are?

Judge CLAIBORNE. Yes.

Mr. CHABRAJA. It doesn't disturb you in the least that he appears to have gone on vacation that day?

Judge CLAIBORNE. No.

Mr. CHABRAJA. All right.

Judge CLAIBORNE. I'm pretty sure what happened, that I went down on the lunch hour.

Mr. CHABRAJA. Let's move on. Let me direct your attention—oh, now we're going to move it into the lunch hour; it wasn't after work?

Judge CLAIBORNE. Well, I—I would think so, from what you've showed me.

Mr. CHABRAJA. OK. We've got it at the lunch hour now. Why don't you take a look at that form again? Do you see where he records you as showing up at the lunch hour? Does he have an entry about you at the lunch hour?

Judge CLAIBORNE. I don't see—well, I don't remember him—recall everything. He didn't make entries of everything he did

Mr. CHABRAJA. But he doesn't have one down there for you at noon.

Judge CLAIBORNE. No, he does not.

Mr. CHABRAJA. But at least we've crisped-up your memory. You now recall that it was over the noon hour.

Judge CLAIBORNE. I don't recall it was during the lunch hour.

Mr. CHABRAJA. You're speculating a little bit, trying to move it into the prevacation period?

Judge CLAIBORNE. I'm not trying to move it into anywhere. My recollection is before that I went down after work. I would—and that was my recollection—I would say that I, in all probability went down—if he was on vacation that afternoon, started his vacation, I would have gone down at noon.

Mr. CHABRAJA. But if he went on vacation that day, you certainly didn't have very much time to gather the information. Your earlier testimony with respect to Mr. Wright's statement, "Good. This gives us some time to get the information gathered together," is not right, is it? You didn't have that time.

Judge CLAIBORNE. Well, yes, I would say he had that time.

Mr. CHABRAJA. All right. Let me direct——

Judge CLAIBORNE. But I don't know when he was going to do the return.

Mr. CHABRAJA. Let me direct your attention to exhibit 16 in the House managers' book of exhibits. Now, this document, I believe, has been identified as your judicial ethics disclosure statement, which you signed and dated on or about May 14, 1980. Isn't that correct?

Judge CLAIBORNE. That is correct.

Mr. CHABRAJA. All right. And what do you reflect there for, "Clients' fees while in private practice?"

Judge CLAIBORNE. $23,050.76.

Mr. CHABRAJA. And where did you get that number?

Judge CLAIBORNE. I took the $22,000 figure and——

Mr. CHABRAJA. The figure Jay Wright had allegedly given you on May 1, right?

Judge CLAIBORNE. That is correct.

Mr. CHABRAJA. OK.

Judge CLAIBORNE. And I added it—added to it a check that I—a notation that I had received a check and had placed it in my disclosure file. So I took the amount of that check and added it to the amount that I had gotten from Wright as the total amount.

Mr. CHABRAJA. OK. You took the figure you allegedly got from Jay Wright, and you worked it a little bit, didn't you?

Judge CLAIBORNE. Well, I worked it to this extent, that I had—my recollection has always been that I had a refund, received a refund check of some kind, or a check of some kind, and that I had written a note, and I placed it in my financial disclosure file, and when I left, I knew. And the reason, actually, that I wrote these figures on the sheet of paper as to my W-2 and the amount he gave me was because when I did this work, I wanted to do it all at one time for both purposes—that is, Mr. Wright and my financial disclosure sheet—because I am only 15 days away from the date I have to make my disclosure.

Mr. CHABRAJA. But once again——

Judge CLAIBORNE. So I put the sheet in my financial disclosure file, and I took it to Los Angeles with me. And when I made out my financial disclosure report, I saw the note of the amount of the check that I had received, and I could not remember where it was from.

Mr. CHABRAJA. You——

Judge CLAIBORNE. And so I added it to the amount I got from Mr. Wright.

Mr. CHABRAJA. Did you do this in Los Angeles, or back home?

Judge CLAIBORNE. No, I did not. I did it back in Las Vegas, because on the 15th, I was back in Las Vegas.

Mr. CHABRAJA. Your stay in Las Vegas was shorter than anticipated——

Judge CLAIBORNE. Yes, yes.

Mr. CHABRAJA [continuing]. Is my memory of your testimony. All right.

Now, once again, you didn't go back to your diary or the slips and check before you filled out this judicial disclosure form?

Judge CLAIBORNE. No I took it from——

Mr. GOODMAN. Excuse me, Mr. Chairman. I object. I think that the record should reflect "the trip to Los Angeles." I believe Mr. Chabraja misspoke himself and said "the trip to Las Vegas"—for record purposes.

Mr. CHABRAJA. Excuse me. I'll accept that correction. Thank you, Mr. Goodman.

You didn't go back to your diary and check to see whether this figure was correct?

Judge CLAIBORNE. No. I made this copy, and I xeroxed a copy and dropped it in my file, the one that I made——

Mr. CHABRAJA. So you relied on the numbers.

Judge CLAIBORNE. Certainly.

Mr. CHABRAJA. You didn't go back and look at the diaries or the slips.

Judge CLAIBORNE. No. I don't recall doing that.

Mr. CHABRAJA. And you didn't go back and look at exhibit 36, either, did you?

Judge CLAIBORNE. No, I did not.

Mr. CHABRAJA. And that was one you didn't put in your judicial disclosure file; you didn't when you——

Judge CLAIBORNE. No; I put it in my——

Mr. CHABRAJA. Well, that one didn't find its way into the judicial disclosure file.

Judge CLAIBORNE. No; Judy had put it in my personal file in the office.

Mr. CHABRAJA. Isn't it a fact that in connection with non-investment income on judicial disclosure forms, you are requested to provide the specific detail of those fees, not the aggregate sum; you understand that, don't you?

Judge CLAIBORNE. No, I do not undertand it because, I mean, that's what the—I didn't ever read the regulations to that effect——

Mr. CHABRAJA. But you exchanged——

Judge CLAIBORNE [continuing]. And neither has any other Federal judge that I've talked to about it.

Mr. CHABRAJA. Wait a minute. You exchanged some correspondence with Judge Tamm and he brought that to your attention, didn't he?

Judge CLAIBORNE. That's correct.

Mr. CHABRAJA. So you comprehended that——

Judge CLAIBORNE. Now, he did not say—he did not say that I had to list the individual source, as I understood it—ever. We had a lot of conversation, not with reference to my 1979 or my 1980 disclosure statement, but as to the 1978.

Mr. CHABRAJA. All right. But if I understand your testimony, you would have us believe that the number on your 1978 disclosure form, exhibit 16, just like the number on House exhibit 21 in your own hand, both of those numbers emanated from Jay Wright and not from you. That's what you want us to believe; isn't that so?

Judge CLAIBORNE. As to the financial disclosure sheet——

Mr. CHABRAJA. Yes, exhibit 21.

Judge CLAIBORNE. Yes.

Mr. CHABRAJA. That's where it comes from. And in both instances, you weren't mindful of the things you had done 19 days earlier that let you arrive at a figure that was in excess of $40,000.

Judge CLAIBORNE. If I had been mindful of it, sir, I mean, those would be the figures that would have been on there.

Mr. CHABRAJA. Let me direct your attention, Judge Claiborne, to exhibit 17 once again. That's the handwritten letter that you sent to Jay Wright about the mortgage company?

Judge CLAIBORNE. Yes, yes.

Mr. CHABRAJA. Now, as I understood your testimony on Friday, you testified that you had a subsequent conversation by telephone with Jay Wright——

Judge CLAIBORNE. Subsequent phone call?

Mr. CHABRAJA. Subsequent——

Judge CLAIBORNE. Subsequent to what?

Mr. CHABRAJA. Subsequent to your sending this document to him on or about March, you had a conversation with him about it.

Judge CLAIBORNE. Yes, I did.

Mr. CHABRAJA. OK; and I didn't quite understand that testimony, and I wonder if you could tell me again to the best of your recollection when that telephone conversation was?

[Pause.]

Judge CLAIBORNE. I am not certain when the conversation occurred. He called me on the telephone, and he said——

Mr. CHABRAJA. Well, let's work a little bit on when. If you don't recall exactly, let's do the best we can to place it. Was it at or about the time that he was working on preparing the tax returns in the middle of June?

Judge CLAIBORNE. Well, I don't know when he started working on it. I mean, my recollection is it was prior to his call asking for the W-2.

Mr. CHABRAJA. So your recollection now, your general recollection, is that it was prior to April 11——

Judge CLAIBORNE. Yes, it was prior to that. I'm pretty sure of that, sir.

Mr. CHABRAJA. OK; so you place it in a time frame prior to the time that you prepared exhibit 36.

Judge CLAIBORNE. This was prepared——

Mr. CHABRAJA. Around March 1?

Judge CLAIBORNE [continuing]. At least the outside of the first week in March.

Mr. CHABRAJA. OK.

Judge CLAIBORNE. He asked for the W-2 on April 10. So this would be sometime in that time period, but I don't know the——

Mr. CHABRAJA. The telephone conversation occurred, to the best of your recollection, between March 1 and April 10, somewhere in there.

Judge CLAIBORNE. Yes, it would have, yes.

Mr. CHABRAJA. All right. Now tell me what, to the best of your recollection, transpired during that telephone conversation.

Judge CLAIBORNE. He said——

Mr. CHABRAJA. Who called who, first? Maybe we ought to——

Judge CLAIBORNE. Oh, he called me.

Mr. CHABRAJA. He called you. OK.

Judge CLAIBORNE. Yes.

Mr. CHABRAJA. And what did he say?

Judge CLAIBORNE. And he said something to the effect that, "I have"—I believe he always called them "an item"; I'm not sure whether he used the word "item" or not—he said, "of 20,000," and he read off this number, $20,622.17. And he said, "What is that?"

And I said, "I don't know."

He said, "Would you check and let me know?"

And I said, "Yes."

Mr. CHABRAJA. OK.

Judge CLAIBORNE. So I checked, and I determined that it was a T.C.D. that I had cashed and I had taken down. And I called him, and I said, "That's a T.C.D. that I took down from the bank."

Mr. CHABRAJA. Did you tell him that the entire amount was a T.C.D., or a portion of it?

Judge CLAIBORNE. I just said that was a—that was a T.C.D.

Mr. CHABRAJA. Well, look at—if you would, let me direct your attention—maybe this will help refresh your recollection. There are some marginal notes on the right-hand side of your writing that Jay Wright has identified as his handwriting. And he makes some entries there, doesn't he—"T.C.D. 10,000, Interest, 622.17"?

Judge **Claiborne**. That's crazy. That's what I've always said. I've seen this before. It doesn't make any kind of sense, because I certainly did not tell him that.

Mr. **Chabraja**. You didn't?

Judge **Claiborne**. And no part of the $20,000 would have been fee.

Mr. **Chabraja**. You're certain about that? You went and checked, and none of that——

Judge **Claiborne**. I'm pretty certain of it, yes.

Mr. **Chabraja**. Well, let's be absolutely certain. You had earlier given this to him as an authentic tabulation of your fee deposits, and now you say that after checking, you were certain that none of it was a fee, and you so told him. Is that correct?

Judge **Claiborne**. Repeat that.

Mr. **Chabraja**. Let me see if I can, Judge. In the letter of exhibit 17, you identified as a fee your deposit on February 2, 1979 in the amount of $20,622.17. Correct?

Judge **Claiborne**. Yes.

Mr. **Chabraja**. All right. Now we are talking about a subsequent telephone conversation, and Jay Wright asks you what that item is. And you went to check, right? That's what you said. You went to check.

Judge **Claiborne**. And I called him back and told him it was a T.C.D.

Mr. **Chabraja**. All of it; all of it's a T.C.D.

Judge **Claiborne**. That's what I told him.

Mr. **Chabraja**. All right. And by "T.C.D.", you mean a rollover of a time certificate of deposit?

Judge **Claiborne**. That's correct.

Mr. **Chabraja**. And you're certain of that?

Judge **Claiborne**. I'm pretty certain.

Mr. **Chabraja**. Let me ask the clerk to mark this document as House managers' exhibit 42.

[Whereupon, the document was marked House managers exhibit No. 42 for identification.]

Mr. **Chabraja**. This was Government exhibit 16 at the second Claiborne trial, if you're following along by original Government numbers.

Judge Claiborne, I am going to hand you what we have marked House managers' exhibit 42, which was Government exhibit 16 at your second trial, and for purposes of identification only, I'm going to identify this folder as including a copy of a checking account statement from the Pioneer Citizens Bank of Nevada for the months of January and February 1979, together with two deposit slips, one of which is dated February 2, 1979, and the items of which that deposit is made up.

And I direct your attention, if I may—and since we only have one document, Mr. Chairman, may I have permission to stand by the witness?

The **Chairman**. You may.

Mr. **Chabraja**. On the second page here, is this the deposit slip for the deposit to which you refer in exhibit 17? Is that the February 2——

Judge **Claiborne**. Yes, that would be it.

Mr. **Chabraja**. All right. And that deposit, according to your deposit slip, is made up of three items, is it not?

Judge **Claiborne**. That is correct.

Mr. **Chabraja**. And——

Judge **Claiborne**. None of them are from the T.C.D.

Mr. **Chabraja**. OK; and in fact, some of the items are here, are they not, including——

Judge **Claiborne**. Yes, yes.

Mr. **Chabraja** [continuing]. An item over $17,000 that is a fee income item, is it not?

Judge **Claiborne**. Over what?

Mr. **Chabraja**. Over $17,000—or, excuse me; I'm trying to read over your shoulder—it looks like seventeen thousand——

Judge **Claiborne**. Yes, seventeen-five. That's a fee item, yes.

Mr. **Chabraja**. All right. And what other items—$3,000, $5,700——

Judge **Claiborne**. That's my paycheck.

Mr. **Chabraja**. It looks like your paycheck, doesn't it?

Judge **Claiborne**. Uh-huh.

Mr. **Chabraja**. And then we have a modest $84 item, which is hiding in here somewhere——

Judge **Claiborne**. I don't see it.

Mr. **Chabraja**. Maybe we don't have it. But I seem to recall an $84—oh, excuse me, Judge. The photocopy is blurry. My colleague points out to me that the $84.38 is at the top, and that's also on the checkbook of James Brown.

Judge **Claiborne**. Yes, yes. That was a fee item.

Mr. **Chabraja**. So the information that you gave to Jay Wright after having checked your deposit records was in fact wrong, was it not?

Judge **Claiborne**. I didn't say I checked my deposit records. I said that I checked, and the information I gave him was that this was from cashing a T.C.D. That's what I said.

Mr. **Chabraja**. Where did you check?

Judge **Claiborne**. Where did I get the information?

Mr. **Chabraja**. No; where did you go to check.

Judge **Claiborne**. I don't know; in the office somewhere.

Mr. **Chabraja**. Well, what kind of things would you have had in the office that could have led you to that——

Judge **Claiborne**. Or, it may have occurred to me that that's what it was.

Mr. **Chabraja**. It may have occurred.

Judge **Claiborne**. Yes.

Mr. **Chabraja**. In any event, the information you gave to Mr. Wright was incorrect.

Judge **Claiborne**. That's correct.

Mr. **Chabraja**. All right.

Judge **Claiborne**. But I sure told him that.

Mr. **Chabraja**. What else happened during that conversation?

Judge **Claiborne**. I don't think anything else.

Mr. CHABRAJA. You don't remember talking about the sale of the airppane?

Judge CLAIBORNE. No.

Mr. CHABRAJA. You don't remember identifying the deposit on May 30, 1979, as interest rather than fee income?

Judge CLAIBORNE. No, I do not.

Mr. CHABRAJA. And you don't remember identifying the entry of November 20, 1979, for $655.73, as interest, rather than fee income?

Judge CLAIBORNE. No, I do not, no.

Mr. CHABRAJA. Did you know by—were you able to discern by your conversation with Jay Wright that he was struggling to ascertain what your true fee income was?

Judge CLAIBORNE. That he was struggling?

Mr. CHABRAJA. Yes. Why was he asking you these questions, Judge?

Mr. GOODMAN. Objection. That calls for a conclusion and speculation on the part of the witness.

Judge CLAIBORNE. No, because he always did that. It didn't—there wasn't anything unusual about what he was doing at all. He always did that. He was always calling me about items. "What about this item?" "What about that item?"

Mr. CHABRAJA. Well, what——

The CHAIRMAN. I think your objection is moot, Mr. Goodman.

Mr. GOODMAN. My client unfortunately has a hard time hearing, Mr. Chairman.

Mr. CHABRAJA. Well, listen. You gave him a list of your deposits. Why is he—and you've identified them as fee income. Why would he ask you questions about what an item is? You've already told him what it is.

Judge CLAIBORNE. In what way?

Mr. CHABRAJA. Well, didn't you tell me—didn't you just get done telling me that he called you up and said, "What is this $20,622.17 item?" You'd already told him what it was. You told him it was fee income in this letter.

Judge CLAIBORNE. I know I told him. What's your point?

Mr. CHABRAJA. Why is he bothering you about it? You've already told him what it is.

Judge CLAIBORNE. I have an—I know what he was doing. He was analyzing these figures is what I think he was doing.

Mr. CHABRAJA. With what? What conceivable analytical tool was available to Jay Wright?

Judge CLAIBORNE. I don't know what—I don't know what—I don't know how he was analyzing it. But he has testified three times that——

Mr. CHABRAJA. He testified you were telling him that this number wasn't correct, and that he was writing down what you were telling him. Is that wrong?

Judge CLAIBORNE. I did not know that he was working on this document. There was no way in the world I could tell he was working on this document.

Mr. CHABRAJA. He didn't tell you——

Judge CLAIBORNE. No, he did not. He said——

Mr. CHABRAJA [continuing]."Hey, Judge, I've got"——

Judge CLAIBORNE [continuing]. He called it "an item". He said—I think his words were to this effect: "I have to have help on an item." He said, "I have an item of $20,622.17 as of February 2."

Mr. CHABRAJA. And you don't have the foggiest notion what Jay Wright was using as an analytical tool to make this analysis.

Judge CLAIBORNE. No, I—no, I don't. I don't know what he was working on, or what stage, or what he was doing with reference to my taxes at that time.

Mr. CHABRAJA. As far as you were concerned, he was just dreamin' away?

Judge CLAIBORNE. Oh, no. You know I don't think that. I mean, that's silly.

Mr. CHABRAJA. Well, what do you think he was doing?

Judge CLAIBORNE. He was working on my taxes in some way. But exactly what he was doing, I don't know.

Mr. CHABRAJA. Did it occur to you to say, "Hey, Jay, take a look at my letter of April 11, 1980. If you're trying to compute my fee income, that'll tell you exactly what it is"? Did that occur to you?

Judge CLAIBORNE. Well, he didn't—he didn't say it was reference to—to what it was reference to. I think if he had said, "You gave me a list so I could write the banks when you got your loan. Do you recall that, Harry?"

And I'd say, "Yes, I recall that."

"All right. So you have an item on there of $20,622.17. Now, are you sure that's a fee?" or "Is that a fee?"

If he had said that, I would have said, "I'm sure that"—the—first thing I'd have said, "I don't know; I'll check." And I would have—and I'm sure—checked it back to my book.

Mr. CHABRAJA. Well, certainly, as Jay Wright sits there and does whatever analysis he's doing, he has absolutely no information available to him other than this letter that would help him determine which of your deposits was or was not a fee. Is that true?

He'd have no way of discerning which deposits were and were not a fee.

Judge CLAIBORNE. If he's going just by the bank deposits, no, he would not.

Mr. CHABRAJA. All right. And he would have no way of telling which of your deposits represent interest?

Judge CLAIBORNE. In all probability, no.

Mr. CHABRAJA. And for that matter, he couldn't discern which of your deposits represented the rollover of a time certificate of deposit, could he?

[Pause.]

Mr. CHABRAJA. No way for him to discern.

Judge CLAIBORNE. I don't think so.

Mr. CHABRAJA. All right. And further, there is no way for him to tell which of your deposits represented the proceeds of a sale of an airplane from the information that he had in his office, was there?

Judge CLAIBORNE. No.

Mr. CHABRAJA. All right. So if he knew those things and put them down on this sheet of paper, there is only one place for them to come from: Harry E. Claiborne. Correct?

Judge CLAIBORNE. Well, I mean, the interest of it could come from the information that I always sent him, along with the invoices, like dividends from New York Life and the interest paid on loans, that you receive from the loan company and your annual statement of interest paid from savings and loans.

Mr. CHABRAJA. So your statement is that he may have picked up the interest item, now that you think about it, somewhere else?

Judge CLAIBORNE. Could have; he could have on——

Mr. CHABRAJA. On the interest items. But you sure don't want to change your testimony on the other items, the big items, the rollover of the time certificate of deposit, the sale of the airplane and which deposits represent fees. There's no way for him to discern that other than from you.

Judge CLAIBORNE. Well, I'm sure that the first place that he has testified is the $11,000 item here—it was his handwriting—for the airplane.

Mr. CHABRAJA. Oh, there's no question but it's his handwriting.

Judge CLAIBORNE. Yes.

Mr. CHABRAJA. The question is where did he get the information.

Judge CLAIBORNE. There's no question of where that came from. It came from my letter of April 11.

Mr. CHABRAJA. Well, but you don't tell him where's the deposit. He's identifying it through a very specific——

Judge CLAIBORNE. Well, he writes that down on the sheet. He said he did it at the same time he wrote these numbers on the right-hand side.

Mr. CHABRAJA. He identifies it exactly with the deposit of April 18, 1979. Well, and certainly, Judge Claiborne, if we accept your testimony that he got the information with respect to the sale of the plane from the April 11 letter, he didn't need to be palavering around about the amount of your income. That's right there in the letter, isn't it?

Judge CLAIBORNE. Well, I don't know. I really don't know. But I'm—you're asking me about the $11,000 item. I'm sure that's where he got it, and the first place that he got it, and—so, that's the best I can do for you.

Mr. CHABRAJA. Judge, you've talked to us about a telephone conversation now that you've had with Joseph Wright which at both of your trials, you denied occurring. Is that consistent with your memory?

Judge CLAIBORNE. What telephone call?

Mr. CHABRAJA. I'm talking——

Mr. GOODMAN. Mr. Chairman, I object to the form of the question. I think it's vague and ambiguous.

Mr. CHABRAJA. Let me sharpen it up, if I may, Mr. Chairman.

Mr. GOODMAN. Please.

The CHAIRMAN. Please.

Mr. CHABRAJA. We're talking about a telephone conversation now, the one that we've been talking about for the last half an hour——

Judge CLAIBORNE. Oh, this conversation?

Mr. CHABRAJA [continuing]. Occurring between March 1 and April 10, having to do with your letter—at least, you identified it as having been precipitated by this letter. Have you ever testified about that before, that conversation?

Judge **Claiborne**. I don't think I follow you. The conversation with reference to the TCD?

Mr. **Chabraja**. Yes.

Judge **Claiborne**. I don't know.

Mr. **Chabraja**. You don't know whether you've testified about that previously or not?

Judge **Claiborne**. I don't know. I've testified to so many things.

Mr. **Chabraja**. Let me see if I can be of assistance, Judge. Your testimony now is that maybe it is correct that you didn't testify with respect to that conversation at either of the first two trials.

Judge **Claiborne**. I didn't say that. I don't—I don't——

Mr. **Chabraja**. You don't recall?

Judge **Claiborne**. I don't have any recollection whether I did or not, if you want to know the truth.

Mr. **Chabraja**. Judge Claiborne, let me help refresh your recollection by referring you to a question-and-answer series at the second trial at page 943, up at the top of the page. The question was put to you as follows: "Do you recall his testimony"—referring to Jay Wright:

> Do you recall his testimony, Judge Claiborne, that he called you, went over the figures, and as a result of that, he wrote down these notations, and that's how he calculated $22,332 as a result of the conversation with you?
>
> Answer: No.
>
> Question: That is not what he testified to?
>
> Answer: He may have—no, I don't recall that he testified to that.
>
> Question: Isn't that what happened, Judge Claiborne?
>
> Answer: No, it isn't.

Does that help refresh your recollection about the position you had taken at trial?

Judge **Claiborne**. Yes.

Mr. **Chabraja**. Pardon?

Judge **Claiborne**. [Nodding head.]

Mr. **Chabraja**. And does that refresh you that you didn't have any recollection of a conversation with Jay Wright on this subject?

Judge **Claiborne**. Oh, I can't—I don't know what you're supposed to say——

Mr. **Goodman**. Mr. Chairman, that inaccurately depicts the prior testimony, and I would respectfully ask the Chair——

Mr. **Chabraja**. Mr. Chairman, I'd appreciate it if Mr. Goodman wouldn't testify. I'm entitled to cross-examine and lead this witness and see if I can get to the truth, without Mr. Goodman's help.

Mr. **Goodman**. I would suggest——

Mr. **Chabraja**. And I don't think he ought to characterize the testimony as he is making this objection.

Mr. **Goodman**. Mr. Chairman, I would suggest that it is improper to ask a question when counsel knows that the question is predicated on some falsity.

Mr **Chabraja**. I don't know that, Mr. Chairman. In fact, I think that it is quite the opposite. But I think the witness should tell us.

Mr. **Goodman**. Mr. Chairman, may I suggest that Judge Claiborne be given a copy of the transcript which concerns that aspect of the testimony so he can refresh his recollection and then have an appropriate question asked?

Mr. CHABRAJA. I'm not conceding for a moment that the question wasn't appropriate, but I'd be delighted to show him the transcript. (Handing document to witness.) Up at the top of page 943, Judge.

The CHAIRMAN. Mr. Chabraja, while the Judge is reviewing that testimony, can you advise the Chair the approximate length of time you think the cross-examination will consume?

Mr. CHABRAJA. I'm about halfway through.

The CHAIRMAN. About halfway through. Well, then, under those circumstances, when you have completed this question, I think we'll take a recess for lunch.

[Pause.]

Judge CLAIBORNE. Yes. What do you want to know?

Mr. CHABRAJA. All right. You have examined that transcript.

Judge CLAIBORNE. Yes.

Mr. CHABRAJA. Your memory having examined it, can you tell me whether this is the first time you've testified to conversation between you and Jay Wright having anything to do with exhibit 17?

Judge CLAIBORNE. No; I don't see anything in here indicating that I had never testified to—about it—before.

Mr. CHABRAJA. Well——

Judge CLAIBORNE. There's nothing here that says I never testified——

Mr. CHABRAJA [continuing]. As I looked at it, you denied having a conversation with Jay Wright on this subject, up at the top of 943.

Judge CLAIBORNE. No; that wasn't what the question was. The question was: "Do you recall his testimony, Judge Claiborne, that he called you, went over the figures, and as a result of that, he wrote the notations down, and that's how he calculated $22,332, as a result of the conversation with you?"

And I said—the answer is: "No."

Mr. CHABRAJA. OK. And the answer is "No" both with respect to the conversation having occurred and the description of it?

Judge CLAIBORNE. He did not go over these figures with me, and he did not arrive at the $22,332 with my help.

Mr. CHABRAJA. You have, I take it, Judge Claiborne, in all of the appeals that followed your conviction and before the proceedings here, had occasion to review in great deal the transcripts of both first and second trials, have you not? I mean, you've had some time to go over these transcripts and read them and reflect on them, haven't you?

Judge CLAIBORNE. Well, I've had—I've had time to read them, let's put it this way.

Mr. CHABRAJA. And I won't belabor this, because those transcripts will speak for themselves, but do you recall anywhere in those transcripts your having identified this conversation between you and Jay Wright that occurred between March 1 and April 10, when you talked about this T.C.D. item?

Judge CLAIBORNE. I honestly don't know.

Mr. CHABRAJA. You don't know.

Judge CLAIBORNE. I really don't know. I mean, there are, I believe, six transcripts of my testimony.

Mr. CHABRAJA. But you don't recall it?

Judge **Claiborne**. No, I don't.

Mr. **Chabraja**. OK. Mr. Chairman, I have finished this line.

The **Chairman**. At that point, we'll recess until 2 o'clock.

[Whereupon, at 12:35 p.m., the committee was recessed, to reconvene at 2 p.m. this same day.]

AFTERNOON SESSION

The **Chairman**. The committee will come to order.

Judge Claiborne, will you resume your seat on the witness stand. Once again, I call to mind that the oath you took previously is still binding upon you.

Judge **Claiborne**. Very well, sir.

Mr. **Chabraja**. Judge, I direct your attention to House managers exhibit 15——

Judge **Claiborne**. Fifteen?

Mr. **Chabraja**. Fifteen; yes, sir, which is your 1979 form 1040, and attached schedules.

Judge **Claiborne**. Yes.

Mr. **Chabraja**. This is the form 1040 which you testified this morning that you signed in blank, on or about the 2nd of May?

Judge **Claiborne**. Yes.

Mr. **Chabraja**. That is your signature on page 2?

Judge **Claiborne**. That is correct.

Mr. **Chabraja**. And you are quite confident that when you signed it, it was in blank?

Judge **Claiborne**. I know it was.

Mr. **Chabraja**. And that it was on or about May 2?

Judge **Claiborne**. Yes. I think that was the date.

Mr. **Chabraja**. Judge Claiborne, at the first trial at your criminal case, you testified, under oath, at page 3258, and I want to ask you if you recall being asked this question and giving this answer.

The testimony begins at line 17. It's a question: "And that's the tax return which you signed on the 15th of June 1980?" Answer: "Absolutely."

Do you remember being asked that question and giving that answer?

Judge **Claiborne**. Yes.

Mr. **Chabraja**. Now, you were in Jay Wright's office on the afternoon of June 16, 1980, were you not?

Judge **Claiborne**. No. I was not.

Mr. **Chabraja**. You were not. You have no recollection of that——

Judge **Claiborne**. I know I was not.

Mr. **Chabraja**. You know you were not. How do you know that?

Judge **Claiborne**. I just know I was not there.

Mr. **Chabraja**. You are just certain of it. You have a memory of what you were doing that day?

Judge **Claiborne**. No. I don't. But I know I was not there on that day.

Mr. **Chabraja**. And do you have a memory of having dinner with Jay Wright on the next evening, or, the 18th, let me——

Judge **Claiborne**. The 18th. Yes.

Mr. CHABRAJA. At his home?

Judge CLAIBORNE. Yes.

Mr. CHABRAJA. You have a memory of that?

Judge CLAIBORNE. Yes.

Mr. CHABRAJA. OK. But you have absolutely no memory of being in his office on the 16th?

Judge CLAIBORNE. I have no memory of being in his office on the 16th. I know I was not in his office on——

Mr. CHABRAJA. OK. Let's take a look, once again, at Jay Wright's diary which is exhibit No. 35, and, if I can turn your attention to the very last page of that, just before exhibit 36. You will find the entry for June 18. You see that there, on a Wednesday evening?

Judge CLAIBORNE. Yes.

Mr. CHABRAJA. And Jay Wright has correctly recorded at 6:15, or 6:30 in the evening, "dinner for Harry Claiborne"?

Judge CLAIBORNE. That's correct.

Mr. CHABRAJA. And you recall being at his home that evening as the guest of honor at a dinner party?

Judge CLAIBORNE. Well, I don't know that I was the guest of honor.

Mr. CHABRAJA. But you were a guest?

Judge CLAIBORNE. I was there with his family, and his wife's brothers and their family. So I, I highly doubt I was a guest of honor.

Mr. CHABRAJA. Well, but let's leave my characterization maybe alone for a moment. But you were there with Jay and his family, and his wife's family?

Judge CLAIBORNE. That's correct.

Mr. CHABRAJA. People close to them, and they included you on that occasion. If you turn to the prior page, which is Monday, June 16, I direct your attention over into the lower lefthand corner, the botton of that sheet, where there is a reference to you, and I read it to you. "Worked on and called Harry Claiborne return, and he was in later."

Now do you have any memory? Does that stimulate you in any way——

Judge CLAIBORNE. Not a bit.

Mr. CHABRAJA. Not a bit. And apparently, it is your view that while the entry on the June 18 is correct and consistent with the facts, that this entry in Jay Wright's diary on the 16th is in error?

Mr. GOODMAN. Mr. Chairman, I would object on the basis that that question is predicated on impeachment of the witness, in an attempt, by using somebody else's document, and that's an improper method of impeachment.

Mr. CHABRAJA. I am not trying to impeach him with somebody else's document. I am just asking him if it jogged his memory.

Mr. GOODMAN. I have no objection if it is being used for the purpose of refreshing his recollection, but there is no reason to read from it at that point. It is just to show it to the witness and ask him whether it helps refresh his recollection, and that is sufficient.

Mr. CHABRAJA. Mr. Chairman, I do not think I should be limited in that fashion at this point in these proceedings.

The CHAIRMAN. Let's see how far the judge's memory is refreshed by having reviewed those notes.

Mr. CHABRAJA. You absolutely do not recall being in Jay Wright's office later in the day on June 16, do you?

Judge CLAIBORNE. No; I do not.

Mr. CHABRAJA. OK. And to the extent that Jay has put that down in his diary, he is in error, is that your testimony?

Judge CLAIBORNE. Well, I would, I would say this: that this, this entry is all during the trial, and even—has always been quite suspect, for the simple reason that at 10:45 he runs a line down the page to the bottom of the page, and this is added at the bottom of the page from a line that runs down from 10:45 in the morning.

Mr. CHABRAJA. Well, let's talk about that.

Judge CLAIBORNE. Just a minute. And I have always maintained I was not in his office, and this has, at least to a certain degree, made me very suspicious. I think it's an afterthought, if you want——

Mr. CHABRAJA. Let's explore your suspicions. Is it your contention that Jay Wright added that to the diary at some later date? Is that what you suspect?

Judge CLAIBORNE. I never like to make, and am not in the habit of making derogatory remarks about people for whom I have had a friendly relationship with. So I'm reluctant to tell you what I really think.

But if you want to know what I think about this, I'll tell you.

Mr. CHABRAJA. Let's hear it.

Judge CLAIBORNE. I think, from what I've heard here, from the heavyset witness—and I can't remember his name—I think what happened was that we had, a number of times, used blank returns, and we used one in 1978, and of course which is undenied because he had a copy of his letter, that I wrote him from Richmond, WA, in his files, enclosing the blank 1040's.

We used a blank 1040 again in 1979. The young man that talked to him about it in his office, and cautioned him about using blank returns, said that Jay promised him he wouldn't do it again.

And I think that he might have gotten the idea that this was exceedingly wrong to do this, and I think he added it to the bottom, to indicate that I was in the office and signed a return.

Mr. CHABRAJA. That is your——

Judge CLAIBORNE. Now if I had been in on the 16th, sir, and signed a return on the 16th, I would have put the date, June 16, on there. I wouldn't have put June 15. But because the extension was up on June 15 when I signed the blank return, I put the day in there that it would be up, the extension was up, not knowing at the time that actually the, the 15th was a holiday, giving the taxpayer the next day.

So he prepared this return, obviously finished it on the 16th, and he mailed it.

Mr. CHABRAJA. So that is your suspicion as to Jay Wright's conduct, is it not?

Judge CLAIBORNE. You asked me and I told you.

Mr. CHABRAJA. And that is what——

Judge CLAIBORNE. That is what I honestly believe about——

Mr. CHABRAJA. This fellow, that you have described, repeatedly, in trial testimony, as your good friend, an honest, true and forthright gentleman——

Mr. GOODMAN. Objection, Mr. Chairman.

I believe that that is not a question, it is a statement and it is argumentative.

Mr. CHABRAJA. If you would let me finish, Mr. Goodman, you can state your objection, and I am entitled to be argumentative with this witness, at this point, in these proceedings. We are here to test the truth, Mr. Chairman, not to protect this witness.

The CHAIRMAN. You can formulate the question and we will then hear from Mr. Goodman.

Mr. CHABRAJA. Judge, you are now telling us for the first time, that you believe that your old friend—and you have characterized him this way many times—friend, honest, truthful, forthright, warm—added that to his diary in a deliberate attempt to implicate you in a crime. Is that your testimony?

Judge CLAIBORNE. No. I didn't say that. I didn't say that. I think that he added it for one of two reasons. Not to implicate me in a crime.

I think he added it because he'd made a promise, I believe the year before—from the testimony of the witness that testified here—that he would not do it, and I think he added it maybe for that purpose, and for the purpose that if there was any question ever came up about this return, it being in blank, that he could say it's—he was in and he signed it.

Now, if I had been in later, there is plenty of spaces on the other page at those hours, that I would have been in, that he would have put "Claiborne was in and signed his return."

Mr. CHABRAJA. OK, Judge. By the way, if you signed that return on or about May 2, why didn't you date it May 2?

Judge CLAIBORNE. I dated it the last date that the extension was up. I knew he wasn't going to file it until the—till right near the end, when the extension was up. We never had.

Mr. CHABRAJA. OK. So you assumed that it was appropriate for you to put on a date that was going to be reasonably consistent with the filing date. Is that your testimony?

Judge CLAIBORNE. I don't think that entered my mind. I knew that the extension was up on the 15th, and I dated it the day that the extension was up. I did it in his office, in front of him.

Mr. CHABRAJA. All right. Consistent with that—

Judge CLAIBORNE. In fact he handed me the blank return.

Mr. CHABRAJA. All right. Yes. We have gone over that. On May 2. Consistent with that testimony, I take it that you never saw the return prior to the time it was filed?

Judge CLAIBORNE. The return as——

Mr. CHABRAJA. As filled out?

Judge CLAIBORNE. As prepared——

Mr. CHABRAJA. Yes.

Judge CLAIBORNE [continuing]. And filled out, no.

Mr. CHABRAJA. And therefore you did not have occasion to review it prior to the time it was filed?

Judge CLAIBORNE. No. I did not.

Mr. CHABRAJA. And you did not have occasion to examine Schedule C before it was filed?

Judge CLAIBORNE. No. I did not.

Mr. **Chabraja**. Did not see any part of it. All right. After it was filed, did Jay Wright send you a copy?

Judge **Claiborne**. That is—I don't, I don't remember whether he did or not. I think not.

Mr. **Chabraja**. You do not think that he gave you a copy of it?

Judge **Claiborne**. I think not. But I have testified that he gave me a copy and because I—at that time I believe he did. I'm not sure of it right now.

Mr. **Chabraja**. You are not sure whether he did or he did not?

Judge **Claiborne**. Well, there's one, one incident that I—really puts me in some doubt now because I was in Mr. Wright's office on—after I was indicted, and I went into his office to get some information. I had a copy of the return, and had already given a copy of the return to Mr. Watson in fact.

And where I got that return I don't know because the lending institution had asked for—him for it. And when I went in, Connie—that's his wife—said to me: "You never picked up your 1979 return," and she handed it to me.

Mr. **Chabraja**. Well. when——

Judge **Claiborne**. And——

Mr. **Chabraja**. When did that occur?

Judge **Claiborne**. Some time in 1983. I think I was indicted in December of 1983. It would have been some time in 1984.

Mr. **Chabraja**. Let's go back a little in time, Judge.

Judge **Claiborne**. But I had a copy before that.

Mr. **Chabraja**. You sure did, didn't you?

Judge **Claiborne**. Yeah.

Mr. **Chabraja**. Because in the spring of 1981, according to your testimony, you supplied that income——

Judge **Claiborne**. Mr. Watson.

Mr. **Chabraja** [continuing]. Tax return to Jerry Watson. So, somewhere between June 16, 1980, and the spring 1981, you found yourself a copy, did you not?

Judge **Claiborne**. Yes, and I may have, I may have received–I may have received it from Mr. Wright's office prior to that. I'm not, I'm not saying I did not, but the copy that she gave me was a copy marked "Taxpayer's Copy," so I——

Mr. **Chabraja**. Did she not give that to you much later?

Judge **Claiborne**. I could have gotten a xerox copy earlier from him, but exactly when I got the copy, I don't know.

Mr. **Chabraja**. But you are fairly comfortable, now that we have discussed it a little bit, that some time within the 6 or 8 months after it was filed, and before you delivered it to Mr. Watson, you received it from Mr. Wright?

Judge **Claiborne**. I'm sure of that.

Mr. **Chabraja**. All right. Now when you got your hands on it, having signed it in blank, I trust that the first thing you wanted to do is examine it?

Judge **Claiborne**. No.

Mr. **Chabraja**. Did you look at it?

Judge **Claiborne**. I really don't know whether I did or not.

Mr. **Chabraja**. Do you recall whether you examined any of it for correctness, having signed it in blank?

Judge **Claiborne**. I have no recollection of looking at it. I may have.

Mr. **Chabraja**. I guess we can agree you were not very careful?

Judge **Claiborne**. I was not with my personal business. I mean that's—Mr. Wright testified that I'd never gone over the return with him after we—after I signed it. I plead guilty to being careless with my own personal business.

Mr. **Chabraja**. Let's talk about 1980. Can we agree that you received $87,911.83 in fee income for the year 1980?

Judge **Claiborne**. Yes. We may.

Mr. **Chabraja**. And that income was made up of four checks, four checks only?

Judge **Claiborne**. That's correct.

Mr. **Chabraja**. And of the four, you deposited three, and cashed one——

Judge **Claiborne**. That's correct.

Mr. **Chabraja** [continuing]. For $37,500 at the casino?

Judge **Claiborne**. That's right.

Mr. **Chabraja**. Correct. OK. And if I remember your testimony, you had decided not to use Jay Wright for the tax year 1980 because he was, in your view, too busy, and, I think in your direct examination you used the word brusque, he was brusque with you.

Judge **Claiborne**. Well, I—he was, and I felt that I was being an imposition to him, to just do a return, but I don't think I would in all probability—and then that's the purpose I think of the invitation to dinner. I think he felt, maybe, that he had—that maybe I may have felt that way from the visit in his office that day, or he was unusually brusque with me. Because I had never been invited to his house for dinner in my entire life, and I had known him for 35 years.

Mr. **Chabraja**. But certainly he wasn't being brusque when he invited you into his home with his family for dinner?

Judge **Claiborne**. I think that was the purpose of the invitation, to make amends, you know, really.

Mr. **Chabraja**. But you also testified, I believe, that in the spring of 1981 when it came to be tax time for the 1980 year, Jay Wright was calling you, ready to do his job, and you didn't return his calls?

Judge **Claiborne**. I don't know that. I know he called the office a number of times. I don't know how many times he called. But I don't know actually what he had in mind. It may well be that that would be the only reason he was calling.

Mr. **Chabraja**. Do you have any recollection of telling him that you weren't going to use him and that you had made some other arrangements?

Judge **Claiborne**. No. I think he already knew it.

Mr. **Chabraja**. Did you talk to him? Did you call him back?

Judge **Claiborne**. No, not except the 1978.

Mr. **Chabraja**. Oh, no. We're talking about the 1981 now.

Judge **Claiborne**. Yeah, I know. You asked me, did I ever talk to him.

Mr. **Chabraja**. I heard you yesterday make an explanation about what you told him in 1978. I want to know if you called him back in 1981 when he was chasing you?

Judge **Claiborne**. I have no recollection of calling him back.

Mr. CHABRAJA. Now, as we begin the year 1981, there are several facts about 1980 that are known to you. The first is you knew what your judicial salary was, didn't you?

Judge CLAIBORNE. Sure.

Mr. CHABRAJA. You knew it was $55,000?

Judge CLAIBORNE. Sure.

Mr. CHABRAJA. OK. And you knew that you had received about $88,000 in legal fees?

Judge CLAIBORNE. That's correct.

Mr. CHABRAJA. And there was no doubt in your mind about that?

Judge CLAIBORNE. That's correct.

Mr. CHABRAJA. You had a book and it was simply only four checks?

Judge CLAIBORNE. Right.

Mr. CHABRAJA. OK. And you had sold your home for $725,000?

Judge CLAIBORNE. That's correct.

Mr. CHABRAJA. And it was a property that you had enjoyed for some 20 or 30 years, true?

Judge CLAIBORNE. Oh, yes.

Mr. CHABRAJA. And you purchased it before housing values were ravaged by inflation in the early seventies, isn't that correct?

Judge CLAIBORNE. That's true.

Mr. CHABRAJA. So you knew that you had a rather handsome gain in connection with the sale of that property?

Judge CLAIBORNE. Yes, I did.

Mr. CHABRAJA. All right. And I don't know whether at the beginning of the year 1981 you knew what your cost basis was for the property and the improvements that you put on it?

Judge CLAIBORNE. Well, eventually I did.

Mr. CHABRAJA. Eventually you added that all up?

Judge CLAIBORNE. Yes.

Mr. CHABRAJA. And it came up, as I recall, somewhere around $360,000, give or take a few dollars?

Judge CLAIBORNE. Yes.

Mr. CHABRAJA. OK. And apart from the alimony that was a recurring deductible expense of yours, you knew that you had relatively modest personal deductions now that you were no longer in private practice?

Judge CLAIBORNE. That's correct.

Mr. CHABRAJA. OK. And it's true that, based on those facts, all of which were known to you, you anticipated significant tax liability for the tax year 1980, isn't that true?

Judge CLAIBORNE. Yes, I expected tax liability.

Mr. CHABRAJA. And now you went out and needed to arrange for someone to prepare your taxes, true?

Judge CLAIBORNE. Well, I mean you say it entirely differently, as smart trial lawyers do.

The fact is that I met Mr. Watson quite by accident. I didn't go out looking for an accountant when I met him.

Mr. CHABRAJA. As I recall your testimony, when you met him through your ex-wife, you were impressed by him?

Judge CLAIBORNE. I sure was.

Mr. **Chabraja**. And you were impressed, as I recall it, by the way he handled the telephone while you were sitting there in his office?

Judge **Claiborne**. I would have to be candid with you and say that that is primarily—that conversation is primarily why I wound up as his client.

I admired the forthright manner in which he answered whatever questions that was being put to him on the telephone. His answers indicated to me that he was a knowledgeable person. I could tell by the course of his answers on the telephone that it was a tax question and a tax problem.

The time that I was in the office, I mean he showed a degree of professionalism that attracted my attention. And I rather in my mind formed a conclusion that I was going to ask him to do my tax return. I thought he knew what he was doing.

Mr. **Chabraja**. Apart from overhearing his end of a telephone conversation where you couldn't hear the party on the other end of the line, what other observations did you make?

Judge **Claiborne**. What other observations?

Mr. **Chabraja**. Yes.

Judge **Claiborne**. I didn't make any other observations of him except that there was a brochure on his desk.

Mr. **Chabraja**. That brochure described all the various——

Judge **Claiborne**. All of the accounting—I don't know exactly. Services that he offered to the general public. And it was quite extensive. And I did take that brochure with me.

Mr. **Chabraja**. Now, his office, I heard him describe it as 1,000 square feet. Is that about the way you remembered it? It's a little suite of offices, couple of offices.

Judge **Claiborne**. I got the impression it was more than 1,000 feet. I mean there was a reception area, his office on the left-hand side, a long hallway that ran down that I couldn't tell too much about. But I could see through the door it was some part of a conference table at the end. It was a large room. Looked like two other offices on the left-hand side.

Mr. **Chabraja**. So, about three offices and a conference room?

Judge **Claiborne**. Yeah. It looked a lot larger than 1,000 square feet to me.

Mr. **Chabraja**. OK. And you saw the brochure describing these extensive accounting services that were being provided, and they were very multiple, weren't they?

Judge **Claiborne**. They were.

Mr. **Chabraja**. And his letterhead had things on it that went well beyond accounting and tax preparation. It also had fields of insurance and real estate, and a number of entries with respect to those?

Judge **Claiborne**. The letterhead had generally the same services that he offered that was in the brochure, but the brochure, of course, was a little more in detail.

Mr. **Chabraja**. All right. And that was, as I remember those services, quite an undertaking even for a large office, wouldn't it be?

Judge **Claiborne**. Yes. He had, you know——

Mr. CHABRAJA. So if I understand you correctly, you were impressed by the professional manner with which he handled the telephone conversation, and you also enjoyed the brochure and the description of the widely varied services that Mr. Watson——

Judge CLAIBORNE. I took it with me and I read it.

Mr. CHABRAJA. Uh-huh.

Judge CLAIBORNE. That evening, sometime in the evening.

Mr. CHABRAJA. Now, I take it that you made a check on Mr. Watson's outstanding reputation in the community?

Judge CLAIBORNE. No; I did not.

Mr. CHABRAJA. You didn't check him out at all?

Judge CLAIBORNE. No; I did not. I——

Mr. CHABRAJA. Did you find out whether he was an accountant?

Judge CLAIBORNE. I assumed automatically that he was.

Mr. CHABRAJA. All right.

Judge CLAIBORNE. I later on, in conversation with him, I knew he was not a CPA, and I think I knew that when I was in his office. I'm not sure of that, you know.

Mr. CHABRAJA. As I remember, he told you that he had some other CPA's on the staff?

Judge CLAIBORNE. He did have. He said he had one

Mr. CHABRAJA. But you didn't bother to meet that person, did you?

Judge CLAIBORNE. Never met him.

Mr. CHABRAJA. All right. And in fact you weren't relying on the other CPA who might have worked for Watson. Your testimony was that you were counting on Watson?

Judge CLAIBORNE. I was relying on him because he said that I have two other—he said I have two other accountants employed by me, one of whom was formerly a CPA in Arizona. He said this CPA will do the work on your return if you'll do all the workup. But I assure you, he said, that I will supervise it.

Mr. CHABRAJA. Did you ask him about his education?

Judge CLAIBORNE. No, sir, I did not.

Mr. CHABRAJA. Did you ask him about his experience?

Judge CLAIBORNE. No, sir, I did not.

Mr. CHABRAJA. Did you ask him about the kind of clientele he was servicing?

Judge CLAIBORNE. I did not, but I found out after I talked to him, that he was doing the accounting for a number of doctors in Las Vegas.

Mr. CHABRAJA. You found that out later?

Judge CLAIBORNE. Yes, rather quickly, after I had been in there.

Mr. CHABRAJA. Now, when we discussed what your income had been for 1980, and the fact that you had a very sizable gain on a real estate transaction, you realized you needed some professional tax help?

Judge CLAIBORNE. Well, I knew I needed professional help because I didn't think I was qualified to do my own return. And I wasn't about to tackle that problem. And I knew I was going to get an accountant somewhere. And I knew I was going to get a tax preparer.

Mr. CHABRAJA. Now, in the years that you have been trying tax cases over in the Federal courthouse, you had seen, I take it, any number of accountants come over and testify in front of you as experts in tax cases, hadn't you?

Judge CLAIBORNE. No, sir, I don't think so. I believe there was only one trial that I can remember that there were any experts testifying, that I can remember. And I can only remember—except if you want to call a summary witness that the IRS called in. They always call a summary witness to summarize the testimony in favor of the Government, and they call them summary witnesses. I've had those. But I don't recall but maybe one case that I had an expert in.

Mr. CHABRAJA. All right. But certainly you knew in the city of Las Vegas any number of lawyers who practiced in a tax specialty?

Judge CLAIBORNE. Oh, yes.

Mr. CHABRAJA. All right. And to the extent that you needed an accountant of ability, it would not have been difficult for you to call one of your colleagues at the bar and ask them who they could recommend?

Judge CLAIBORNE. You know, hindsight is a remarkable thing.

Mr. CHABRAJA. Sure is.

Judge CLAIBORNE. And what I could have done is one thing. What I did is another.

Mr. CHABRAJA. But you did something else?

Judge CLAIBORNE. I didn't do anything else as you put it. I only did one thing——

Mr. CHABRAJA. You hired——

Judge CLAIBORNE [continuing]. Because I wasn't trying to make a decision between a CPA or Mr. Watson or anybody else. I went into his office. I was impressed by the way he handled himself and the professionalism he showed. I decided I wanted him to do my return. I thought he was qualified.

Mr. CHABRAJA. And you found just the fellow you were looking for, didn't you, Mr. Odd Job?

Mr. GOODMAN. Objection, Your Honor.

Judge CLAIBORNE. That's unfair. You know better than that.

Mr. GOODMAN. I object. I think that the question was argumentative and insulting. Judge Claiborne is still an article III judge even though he is undergoing cross examination.

Mr. CHABRAJA. The question was predicated on the letterhead that to me had about 40 occupations listed. I apologize for any insult Mr. Goodman may have seen in it, but I didn't intend it to be insulting. I intended it to be descriptive.

The CHAIRMAN. Well, I think it was perhaps a little florid in its description.

Mr. CHABRAJA. I will withdraw it, Mr. Chairman.

Let us go back to Mr. Watson.

To what extent did you and Mr. Watson at your very first meeting discuss your tax problems?

Judge CLAIBORNE. We did not discuss any tax problem of mine at the first meeting.

Mr. CHABRAJA. When was your second meeting?

Judge CLAIBORNE. My second meeting with him I believe would have been sometime in February or March, and I'm not sure of this.

My next visit to his office was to ask him a question.

Mr. **Chabraja**. And the question, sir, that you put to him?

Judge **Claiborne**. I have a very close friend who's recently deceased, was a district judge. And we were talking about the sale of my house. And he told me that he believed that before you could deduct the cost of a new dwelling when you had sold your old dwelling, that you had to live in that residence for a year. And I had bought the place and it was too noisy for me, and I went and bought another place, a smaller townhouse. And he thought because I had not lived in the other place a year, it would affect my right to deduct the cost of my new dwelling. And I made an appointment with Mr. Watson and I went in to see him, and I asked him, and he said that was not correct.

Mr. **Chabraja**. You discussed with Mr. Watson at the outset, the rules with respect to the timing of purchase and sale of residence for tax purposes?

Judge **Claiborne**. I just put it to him the thing that Judge O'Donnell said to me.

Mr. **Chabraja**. OK.

Judge **Claiborne**. And——

Mr. **Chabraja**. And he said that was wrong?

Judge **Claiborne**. And he said that's incorrect.

But we did go into—we did talk about the sale of the house and what I got for it, and the new house I bought and how much I paid for it. And that was generally the conversation.

Mr. **Chabraja**. Did you talk about what kind of a gain you were going to experience——

Judge **Claiborne**. No.

Mr. **Chabraja** [continuing]. In this transaction?

Judge **Claiborne**. No. No.

We talked also at the same time about the losses I sustained when I sold my business.

Mr. **Chabraja**. Let's back up to the residence for a moment.

Did Watson leave you with the impression that he would be able to shelter the vast majority of the gain?

Judge **Claiborne**. No. He didn't make any representations to me about it at all.

Mr. **Chabraja**. OK. Then——

Judge **Claiborne**. In fact, I doubt that he had enough information at that time to make a value judgment in order to express what he thought about it.

Mr. **Chabraja**. All right. I interrupted you. I'm sorry.

You passed on to the question of taking a loss on your business?

Judge **Claiborne**. While I was there, we did discuss the loss of my business. It didn't come from me. Apparently, according to him, he had talked to a lawyer that had, he said, mentioned to him—I think the way it came up, said I was talking to this lawyer, and he said that you really took, he called it, a shellacking when you took the bench. And I said, yes, I did. And he said tell me about it. And I told him the whole story, you know.

Mr. **Chabraja**. And you wound up talking about 45 minutes about it, didn't you?

Judge **Claiborne**. No, I wouldn't say that. I think that maybe I was in there probably—who knows? I doubt I was in there 45 minutes. But I could have been. I think more like 30.

Mr. CHABRAJA. But you discussed the specific figures that you had talked to potential purchasers about, people who were interested in purchasing your law practice, you told him that story?

Judge CLAIBORNE. No, I don't think so. I don't think I told him the names of the individuals that I had negotiated with. I'm sure I didn't. At a later date, I did.

Mr. CHABRAJA. At some later date, you gave him all the specifics with respect to Mr. Manzoni and Ms. Quintana, people of that, who had——

Judge CLAIBORNE. That's correct.

Mr. CHABRAJA. OK. So you had had several conversations with him on the subject of taking a loss on the abandonment of your practice in 1978?

Judge CLAIBORNE. No. Only two. That conversation and a conversation with him when he wrote me the letter. He wrote me a letter, and he said the prospects of something of a loss on your business looks good, or words to that effect. Somewhere I think you have the letter.

After that, we had a detailed conversation about it.

Mr. CHABRAJA. You did?

Judge CLAIBORNE. Yes, we did, after the letter.

Mr. CHABRAJA. After the letter came? This is the letter, is it not, that's in the House manager's exhibit book as exhibit 31 on the letterhead of Creative Tax Planning, and dated April 6, 1981? Right there in the middle of that letter, doesn't he say the possibility of taking a loss on your business looks good?

Judge CLAIBORNE. Yes.

Mr. CHABRAJA. And it was after you received this letter that you had the third conversation with him and you got into a very detailed discussion of the prospects?

Judge CLAIBORNE. That is correct, because he said that we will assemble supporting information with your help to determine the amount of this loss.

Mr. CHABRAJA. OK. Now, when you finally had the detailed discussion with him, after you had received the letter of April 6, 1981, did he tell you that as part of the loss that he was taking on your business for you, that he was going to somehow put into that loss $88,000 of legal fee income?

Judge CLAIBORNE. No.

Mr. CHABRAJA. He didn't tell you that——

Judge CLAIBORNE. He didn't make any kind of representation to me exactly how he was going to treat anything.

The second meeting where the subject of the business loss came up, he was more interested in getting information. He wanted the details.

Mr. CHABRAJA. On the value of your business?

Judge CLAIBORNE. Of whatever was there. Like my library, what happened to my library, what happened to this or that? Your accounts receivable, how much accounts receivable did you have?

And what did you do with these things, and all of those kinds of questions. This was a long conversation. It was the longest I think I ever had with him.

Mr. CHABRAJA. I guess where I'm trying to take you, Judge Claiborne, is in all of the conversations you had with Jerry Watson prior to the time you signed the return, did he ever tell you that the Schedule D loss that you were discussing with him was going to be used to offset in any way the $88,000 of Schedule C income?

Judge CLAIBORNE. No. The first time that I knew that was when I saw that attached to the return and I read it.

Mr. CHABRAJA. OK.

Judge CLAIBORNE. That's the first time, except that when he brought my copy of the return in. And I asked him.

Mr. CHABRAJA. Well, we'll get to that.

Judge CLAIBORNE. He said that he had established the loss.

Mr. CHABRAJA. That's when you knew that he had taken a loss?

Judge CLAIBORNE. Sometime after in the months that passed, I eventually learned from looking at the Schedule D that he had tried to take a loss.

Mr. CHABRAJA. Well, it's clear that he tried to take a loss.

When was it that you learned that somewhere in that loss he had taken was buried your $88,000 of legal fee income? When did you learn that?

Judge CLAIBORNE. You're—is your question as to date?

Mr. CHABRAJA. Yes. When was it that you learned that within that schedule D loss that you could observe he had buried $88,000 of——

Judge CLAIBORNE. I think it was when I—that I asked him to come to the office. And I said explain this to me, I want you to explain to me how you have done this.

Mr. CHABRAJA. OK. This is the conversation, if I remember your direct examination, that occurred sometime subsequent to the time that Mr. Watson had appeared before the Grand Jury in Reno?

Judge CLAIBORNE. That's correct.

Mr. CHABRAJA. OK. So up until that time, sometime in 1983, your testimony is that you didn't have any idea that your $88,000 of legal fee income had somehow been absorbed in Schedule D?

Judge CLAIBORNE. In Schedule D, no. But in what he said when he brought the return in to me and collected his $1,800, I knew that he had taken a business loss.

Mr. CHABRAJA. That was obvious?

Judge CLAIBORNE. And that he—because he used the word "I recaptured the"—I think, I'm not sure if he used the word "recapture," and he said—anyway, from what he said, I knew that he had deducted the moneys that I had collected as fees from the amount of the loss.

Mr. CHABRAJA. OK. Now, we're moving it back in the time spectrum, and it's your testimony, if I understand you, that a few days after you signed the return, when Mr. Watson and his partner brought you a copy to your chambers, you realized that the $88,000 of legal fee income had in some way been offset against that business loss?

Judge CLAIBORNE. Yes, because I saw the—in thumbing through the return, I saw the refund that I was entitled to. And that's what brought forth the conversation. I said how did you accomplish this? Somehow I—it's hard to say looking back what impressions you have are based on, you know.

Mr. CHABRAJA. But you had an impression anyway?

Judge **Claiborne**. Yes. From what he said, I knew from what he said was that in the return he had treated the moneys I had received in fees in some way against the losses.

Mr. **Chabraja**. So, at that point, you were able to discern, no matter how fleetingly, that some $88,000 of ordinary income had found its way onto a capital gain and loss schedule? That was the impression that you were left with when Mr. Watson visited you in yor chambers, is that your testimony?

Judge **Claiborne**. Not that it found its way into the loss column, but that by some procedures as how he reached that destination. Let's put it that way.

Mr. **Chabraja**. But you didn't find out exactly how he flew there, did you?

Judge **Claiborne**. No, I didn't. And I did ask him this, I said, well, can you support it? That's what I asked him. And he said I sure can.

Mr. **Chabraja**. Let's go back for a moment to the day that you went over to execute the return itself in Mr. Watson's office—and, by the way, there's a photocopy of the 1980 return in the book you have, it's exhibit 27, House manager's 27.

Judge **Claiborne**. All right, sir.

Mr. **Chabraja**. OK?

Judge **Claiborne**. I have it.

Mr. **Chabraja**. Is that your signature on the second page?

Judge **Claiborne**. Yes, it is.

Mr. **Chabraja**. And the date, is that your handwriting for the date?

Judge **Claiborne**. Yes, it is.

Mr. **Chabraja**. OK. And it was executed on or about the date that it bears?

Judge **Claiborne**. I'm sure it was signed on that day.

Mr. **Chabraja**. All right. And this time the return was fully prepared before you signed it?

Judge **Claiborne**. Yes, it was.

Mr. **Chabraja**. You didn't sign it in blank?

Judge **Claiborne**. Oh, no.

Mr. **Chabraja**. All right. And my recollection is you testified that while you were in Mr. Watson's office, he didn't show up because you were a little late and he had another appointment, is that your testimony? Do I have that accurately?

Judge **Claiborne**. Yeah, I think that's what I said, that at least he was not there, and the lady who brought me the papers said that he had an appointment

Mr. **Chabraja**. All right. And you sat down and thumbed through the return——

Judge **Claiborne**. No. I stood up.

Mr. **Chabraja**. You stood up and thumbed through?

Judge **Claiborne**. Yeah.

Mr. **Chabraja**. You didn't bother to sit down, you just thumbed through it standing up?

Judge **Claiborne**. Yeah.

Mr. **Chabraja**. And my memory of your testimony was that you were in such a hurry that you didn't even notice that the return was in pencil?

Judge **Claiborne**. I may have noticed it was in pencil, and it did not impress me. But I think that the first time I really was aware of it being in pencil was when he brought it to me and a copy to my office.

Mr. **Chabraja**. Now, that's what I thought you said.

Judge **Claiborne**. And that is my impression. I may well have been aware it was all in pencil when I originally—but I don't——

Mr. **Chabraja**. But your testimony on direct examination was you really didn't believe you had any impression at that time that the return was in pencil. And I think your testimony was that you discovered that 3 days later when he brought your copy?

Judge **Claiborne**. I think that would be correct.

Mr. **Chabraja**. And he brought you a photocopy like the one that's in the book as exhibit 27, didn't he?

Judge **Claiborne**. Yes, he did.

Mr. **Chabraja**. All right. I want you to tell me something, Judge. How can you tell from a Xeroxed copy what's in pencil and what's in ink?

Judge **Claiborne**. You can't.

Mr. **Chabraja**. I can't either.

Judge **Claiborne**. No.

Mr. **Chabraja**. OK.

Judge **Claiborne**. I had to make that impression from being in there when I signed it.

Mr. **Chabraja**. OK. So you noticed when you signed it that it was in pencil?

Judge **Claiborne**. Obviously I must have noticed it.

Mr. **Chabraja**. Did that give you a feeling of comfort to see that your return was having very substantial matters on it was in pencil?

Judge **Claiborne**. I think that I have said before that in looking back on it, I was—that was unusual.

Mr. **Chabraja**. All right. In light of that fact, the fact that you hadn't done business with Mr. Watson before, was your confidence in him slightly eroded when you saw this return in pencil?

Judge **Claiborne**. I do not think so.

Mr. **Chabraja**. It looked pretty scroungy, did it not? It was not even together, as I recall your testimony? Wholly apart from being in pencil, if I remember what you said, you said it was not even put together; it was not all together in one neat little package.

Judge **Claiborne**. I got the impression that there were some work papers attached to it. I mean, on there. It was brought in to me, several papers, loose, and they had a paper clip on the right-hand margin of the page, too, for the signature. And I leafed through them.

Mr. **Chabraja**. But you were still impressed, still full of confidence, and you signed the return comfortable that Mr. Watson had done his job and that you could rely on him?

Judge **Claiborne**. No. I do not recall having any impression that I felt comfortable or that I felt uncomfortable. Looking back now, I know that I was in one heck of a hurry to get out of there and get back to my office. And I hastily thumbed through it, I signed it, and I left. And I turned to the girl as I went out, and I said, "Have him mail me a copy."

Mr. **Chabraja**. You really did not give it much thought. You just——

Judge **Claiborne**. I sure did not.

Mr. **Chabraja** [continuing]. —signed away.

Judge **Claiborne**. I sure did not. I sure did not.

Mr. **Chabraja**. I take it that you did not have time to take a look at form 2119 and see that there was absolutely no gain recognized on that return with respect to the sale of your principal residence?

Judge **Claiborne**. I do not think so.

Mr. **Chabraja**. You did not notice that. And I take it you also did not have time to notice the absence of schedule C and the fact that no legal fee income was reported?

Judge **Claiborne**. No, I did not notice there was no schedule C.

Mr. **Chabraja**. And did you see schedule D?

Judge **Claiborne**. I think I was aware that there was a schedule D.

Mr. **Chabraja**. You saw that there was a loss schedule, a capital loss schedule, but I take it that you did not have time to——

Judge **Claiborne**. I did not read it, but I am quite certain that I saw that there was a schedule D.

Mr. **Chabraja**. Now, if you had seen that schedule D as it now appears, that rather ridiculous schedule D calculation, I take it that you would not have signed that return if you——

Judge **Claiborne**. I have said so before.

Mr. **Chabraja**. You have said so.

Judge **Claiborne**. Yes.

Mr. **Chabraja**. OK.

Judge **Claiborne**. I would not have signed it for this reason, because when I saw that it had a line drawn down the side of the page and it says "type here," it indicated to me that it was a work paper. And I would not have signed it for that reason had I seen that. I would have said to the girl, "I want to talk to Mr. Watson about it." I am quite certain I would have done that.

Mr. **Chabraja**. Well, and there are other things that were certain——

Judge **Claiborne**. Well, I would have called to her attention, maybe, that is this not a work paper.

Mr. **Chabraja**. And there were other sort of ridiculous things about that schedule, were there not? You know, the numbers, 250, 150, 100, those numbers?

Judge **Claiborne**. I do not think that I took any time to see that it was done properly.

Mr. **Chabraja**. And had you been cognizant of those numbers, certainly you would not have signed that return without asking somebody just what in the world do these numbers have to do with anything, would you?

Judge **Claiborne**. I do not know.

Mr. **Chabraja**. You might have gone for those numbers?

Judge **Claiborne**. I do not know. I have thought about that, and if I knew that it was wrong, it would be an incorrect—it would be a different thing. But I am not sure that I knew that he did it improperly.

Mr. **Chabraja**. Well, did you know that he had done it properly? Had you observed that?

Judge CLAIBORNE. Well, I could not make a determination that it was done properly if I could not make a determination that it was improperly done.

Mr. CHABRAJA. Because you did not have enough information to deal with that schedule at all?

Judge CLAIBORNE. I do not think so.

Mr. CHABRAJA. And as a matter of fact, you did not even notice it at the time you signed it, other than the fact that it was there?

Judge CLAIBORNE. That is correct.

Mr. CHABRAJA. OK. And I take it you also did not check the bottom line to see how much your tax liability was for the entire year?

Judge CLAIBORNE. No, I did not.

Mr. CHABRAJA. On line 54. You did not observe that your tax liability was only $1,103 in the face of the kind of income that you had enjoyed that year?

Judge CLAIBORNE. No, sir, I did not. But I did check and did see when he brought it in that I was entitled to a refund.

Mr. CHABRAJA. And did you notice on the form that he had only listed $22,030 as your withholding and estimated tax payments?

Judge CLAIBORNE. No, I did not know that until I received the refund, and I talked to him about it. That is when I found out.

Mr. CHABRAJA. And you would have known that that was wrong because you recall just a month or so earlier that you had sent in another $20,200 with your extension?

Judge CLAIBORNE. Well, the funny thing about it is I did not.

Mr. CHABRAJA. You did not remember that?

Judge CLAIBORNE. No. When I received the check, I knew it was more than the return. So I went in and I got my return, and I saw it was——

Mr. CHABRAJA. You did not know why?

Judge CLAIBORNE. It was terrible. And I have to be honest with you and say I did not know why. And so I took it down to him, and he did not know either. And he said, "I will check into it." And he wrote, I think, the date and the amount of the check down and handed me back the check, and said, "I will call you about it later."

And the same day, he called me and he said, "On the extension you paid $20,000 and something," and he said, "I did not pick it up in the return, but the Service Center did, and so they added it to the refund that you had coming."

Mr. CHABRAJA. Now, let us talk about a few days after you were in Mr. Watson's office and you signed the return standing up. My recollection of your testimony is that 3 days later Mr. Watson and his partner, Linda Lamb, presented themselves in your chambers with a copy of the return.

Judge CLAIBORNE. That is correct

Mr. CHABRAJA. And they also presented you with an invoice at that time?

Judge CLAIBORNE. 1,800.

Mr. CLABRAJA. All right. And did you take that opportunity to go through that return at that point in time?

Judge CLAIBORNE. I looked at it as we talked. I thumbed through it as we talked.

Mr. CHABRAJA. All right. Did it look like the kind of professional package that you had anticipated from Mr. Watson?

Judge CLAIBORNE. I cannot say from the copy that it looked unprofessional.

Mr. CHABRAJA. Was your confidence in any respect beginning to wane?

Judge CLAIBORNE. Beginning to wane? No, it was not. I said I did not notice from the copy that he gave me that it was unprofessionally done.

Mr. CHABRAJA. Did you notice on form 2119 that there was absolutely no gain reported with respect to your sale of principal residence?

Judge CLAIBORNE. No.

Mr. CHABRAJA. You did not observe that?

Judge CLAIBORNE. No. I have never observed that, and apparently neither has anybody else.

Mr. CHABRAJA. Well, I sure did, did I not?

Judge CLAIBORNE. I mean, only your expert that you called. It is a funny thing.

Mr. CHABRAJA. It sure is——

Judge CLAIBORNE. I had a CPA that audited the year 1980 for us, had been in the Internal Revenue Service for over 20 years and a CPA, and a "name" CPA, you know, a guy in the business like you, blue chip. And he did not catch it. All the Internal Revenue agents that worked on my case did not catch it. Nobody ever mentioned it until your expert mentioned it the other day.

Mr. CHABRAJA. Well, if you take a look at that form 2119 in that return, which is exhibit 27, would you turn to that form?

Judge CLAIBORNE. Now, where are you talking about?

Mr. CHABRAJA. Form 2119. If you will just thumb through the return, you will get to it about 4 or 5 pages back. It is behind schedule D couple pages.

Judge CLAIBORNE. What is the form number?

Mr. CHABRAJA. 2119, sale or exchange of principal residence.

Judge CLAIBORNE. All right.

Mr. CHABRAJA. Now, you see that form?

Judge CLAIBORNE. Yes.

Mr. CHABRAJA. All right. If you look down at line 18, which is the gain taxable in this year, what do you see there? Zero?

Judge CLAIBORNE. That is correct.

Mr. CHABRAJA. It did not take an expert to spot that. Zero is zero, and that is the gain recognizable in the year 1980, is it not?

Judge CLAIBORNE. Well, all it takes is being able to read, you know.

Mr. CHABRAJA. All right. I agree with you.

Judge CLAIBORNE. Anybody can see a zero.

Mr. CHABRAJA. I agree with that. It does not take a blue-chipper. All it takes for you to notice that there is no gain reportable in the year 1980 is for you to look at that schedule; is that not correct?

Judge CLAIBORNE. Yes.

Mr. CHABRAJA. OK. That is all it took for your CPA and all the other folks you may have had look at this to spot that there was no gain on this sale, was that zero?

Judge CLAIBORNE. Well, apparently none of them caught it. None of them saw it.

Mr. CHABRAJA. And you did not catch it?

Judge CLAIBORNE. I sure did not.

Mr. CHABRAJA. And until you walked in here into this hearing, I take it, and heard from Mr. Wilson, you operated on the assumption that there were no troubles with your schedule 2119——

Judge CLAIBORNE. Absolutely.

Mr. CHABRAJA. OK.

Judge CLAIBORNE. You know, because no one had ever mentioned anywhere along the line.

Mr. CHABRAJA. And you——

Judge CLAIBORNE. Government or defense, that there was anything wrong with this return other than the way the $88,500 was treated

Mr. CHABRAJA. And knowing that your cost basis was some $360,000, and that you had enjoyed a gain of over $314,000 on this property, it did not strike you as strange that you were not going to pay any tax?

Judge CLAIBORNE. It did not strike me as strange because I did not pick it up. I did not recognize it, and I am in real good company in that regard.

Mr. CHABRAJA. Sometimes the company does not help.

Mr. GOODMAN. Mr. Chairman, I move to strike Mr. Chabraja's last statement. It was not a question. He is supposed to be asking questions.

Mr. CHABRAJA. I will accept that, Mr. Chairman. I would similarly like to move the gratuitous response of the witness about all these other fellows who missed that. If we are going to do some striking, let us strike all the volunteered statements.

The CHAIRMAN. Mr. Chabraja has withdrawn his statement.

Mr. CHABRAJA. Thank you, Mr. Chairman.

Let me see if I can find my place here, Judge.

My recollection of your prior testimony in this proceeding is that in fact at the meeting with Linda Lamb and Jerry Watson, you did take a look at this schedule D?

Judge CLAIBORNE. I think I testified that I at that time saw it.

Mr. CHABRAJA. And I think you testified that you had the impression at that time that something was wrong with schedule D, something that you could not quite identify?

Judge CLAIBORNE. Yes. I think I had that impression, and I think maybe it was formed from—now I think it was formed when I first looked at the return.

I had an impression there was something wrong with it, and that is all

Mr. CHABRAJA. And you did not do anything about that?

Judge CLAIBORNE. No, I did not. I did not.

Mr. CHABRAJA. Let us see if we can explore a little bit just what it was that seemed wrong with schedule D. You could discern, could you not, from even the briefest examination of schedule D that your tax preparer was taking a $100,000 loss on a business that had been closed in 1978? Is that not a fact? I mean, you had let——

Judge CLAIBORNE. At that time, no. I mean, at a later time, that is exactly—after he had testified in Reno and had come back, and I wanted an explanation of the whole thing, then he gave me an explanation. Then I became aware of it.

Mr. CHABRAJA. Let us just deal with what the facts were and what you knew in your chambers 3 days after you signed the return.

Judge CLAIBORNE. I did not know that.

Mr. CHABRAJA. Well, you had discussed with Mr. Watson taking a loss. You discussed it on three occasions, taking a loss on the closure of your law practice, which occurred in 1978, and you knew—that that was being done?

Judge CLAIBORNE. Yes. He told me.

Mr. CHABRAJA. And he sent you a letter about it.

Judge CLAIBORNE. Yes.

Mr. CHABRAJA. OK. So you knew that two years after you had closed your business you had a tax preparer trying to take a loss on that? That much you knew, true?

Judge CLAIBORNE. Yes.

Mr. CHABRAJA. All right. And you also pointed out to me earlier that you also learned during this conversation that Mr. Watson, in some way that you did not quite understand, had taken your $88,000 of fee income and in some way used it in the schedule D. And in your words, it was some form of a recapture that you did not quite understand.

Judge CLAIBORNE. Yes.

Mr. CHABRAJA. All right.

Judge CLAIBORNE. I think he used the word recapture.

Mr. CHABRAJA. All right. But you knew that the effect of schedule D was to eliminate the $88,000 of fee income from your schedule, and in addition to that, you saw a $100,000 loss sitting over there?

Judge CLAIBORNE. No, I did not.

Mr. CHABRAJA. You did not see that?

Judge CLAIBORNE. I probably saw the $100,000 loss, but as to knowing then exactly what he did with schedule D, I can honestly say I do not know and did not know then.

Mr. CHABRAJA. All right. One thing you did know, though, you may not have known exactly what he did, but you knew it was pretty aggressive tax treatment?

Judge CLAIBORNE. I did not hear you.

Mr. CHABRAJA. You knew it was pretty aggressive tax treatment?

Judge CLAIBORNE. Aggressive?

Mr. CHABRAJA. Aggressive. This was not a conservative approach. You knew that, did you not?

Judge CLAIBORNE. No, I did not know that.

Mr. CHABRAJA. You did not know that. But you did tell me——

Judge CLAIBORNE. I do not know how in the world he would be aggressive with—an aggressive approach in anything that is as dull as accounting.

Mr. CHABRAJA. OK. One thing you did tell us on Friday is that no matter what Mr. Watson's explanation to you—and I think your words were, "I was not a hundred percent sucked in." Right? Do you recall that?

Judge CLAIBORNE. Yes. I sure do.

Mr. CHABRAJA. OK. I take it that means you were not a hundred percent confident in what he had done at that point in time?

Judge CLAIBORNE. No. What I exactly meant was this: I felt sorry for Mr. Watson on the witness stand the other day. I know what I should have done. I believed all the representations that he made to me. I believed he was qualified. I thought this was his business. I should have made further inquiry.

Then when I heard that a number of doctors—he was doing the books for a number of doctors. I thought he was qualified. It strengthened my conclusion previously made.

So when I say I was not entirely sucked in, I meant entirely—that I cannot blame him entirely for my predicament because I should have—looking back, I should have checked closer. I never should have been as careless with my returns throughout the years that I had been.

So some part of it had to be put on my shoulders and it all cannot be put on the shoulders of Jerry Watson.

Mr. CHABRAJA. Judge, if we accept your statement, that you were gullible enough to believe that Jerry Watson was capable, at the time you retained him, certainly your confidence in him has to be diminished 3 days after you signed this return, when you began to understand from Watson what had happened here.

Judge CLAIBORNE. I don't think my confidence in Mr. Watson was diminished.

Mr. CHABRAJA. Not one bit?

Judge CLAIBORNE. Wait a minute. Oh, yes. You can bet it's diminished. At that time, until I—that he told me what he had testified to in the grand jury, and that I asked him to then, at a later date, to come down and explain to me how he did my return. And then when I found out, later on, that he was not an accountant, though he was holding himself out as one, and from what occurred with reference to the return, I certainly was unhappy with him and I don't think—he's a professional and I, I don't think he knew what he was doing.

Mr. CHABRAJA. After you met with Mr. Watson on, about June 18, some 3 days after he filed your return, I take it that you took the return and filed it away with your personal papers, and never again examined it until after your conference with Mr. Watson at your house, after he testified before the Reno grand jury?

Judge CLAIBORNE. I don't think I ever had a conference with him in my house. We went to my house to secure part of the workpapers——

Mr. CHABRAJA. I think——

Judge CLAIBORNE [continuing]. That he'd returned——

Mr. CHABRAJA. I understand your being cautious but let me see if I can help you.

My understanding of your prior testimony—and correct me if I am wrong—is that after you received your copy of the return, you put it away never to look at it again, until Mr. Watson had had the conversation with you on the telephone, and then at your house, and in the aftermath of that conversation you took out the return and examined it?

Judge CLAIBORNE. I think in a matter of a few weeks, maybe a few days, that after he came back from Reno, that I took the return then and I looked at it.

Mr. CHABRAJA. It is within a few weeks after Watson came back from Reno?

Judge CLAIBORNE. Came back from testifying in Reno. I don't know, I don't know when he testified up there. I believe it was summertime. That's all I can tell you.

Mr. CHABRAJA. And it was—and right when he——

Judge CLAIBORNE. When I studied it I could not understand it.

Mr. CHABRAJA. OK.

Judge CLAIBORNE. I did not understand it. I called him and I said, "Come down here. I want to talk to you."

Mr. CHABRAJA. Let's just get the timing right. I want to make sure that you are answering my questions so we do not have any debate about this later.

From the time that he gave you the copy until the time you examined it 2 weeks, approximately, after Watson testified before the Reno grand jury, you had not had occasion to examine that return?

Judge CLAIBORNE. No. I don't think so.

Mr. CHABRAJA. You do not think that you did?

Judge CLAIBORNE. I don't think I did.

Mr. CHABRAJA. OK. So it is sitting in your file somewhere——

Judge CLAIBORNE. Yes, the file.

Mr. CHABRAJA [continuing]. At that point in time, and as far as you know you do not have any problem with respect to your 1980 income tax return?

Judge CLAIBORNE. At that point?

Mr. CHABRAJA. Yes.

Judge CLAIBORNE. Oh, no.

Mr. CHABRAJA. And when Mr. Watson delivered you that copy, did you look and see that you only had $1,103 of tax liability?

Judge CLAIBORNE. No. I did not. I mean, the only thing I concentrated on when I talked to him was the schedule D, and I said, "I don't know what this is. I cannot understand this, and I want to know how you did this."

Mr. CHABRAJA. Now this conversation you are just relating to me, I take it, is after he testified before the Reno grand jury?

Judge CLAIBORNE. That's correct.

Mr. CHABRAJA. This is not back when he delivered the return to you?

Judge CLAIBORNE. No. This is a conversation after he got back from the grand jury.

Mr. CHABRAJA. All right. Let's go back. When he first gave you the return, you noticed schedule D and you had some fleeting discussion with him about it, but you did not——

Judge CLAIBORNE. Oh, no. We didn't—he didn't go into details to say how he did it. He, he used a lot of phrases like——

Mr. CHABRAJA. Recapture?

Judge CLAIBORNE. Recapture, and——

Mr. CHABRAJA. And you did not——

Judge CLAIBORNE [continuing]. The cost—I understand he said something to the effect of cash basis and accrual basis, and I——

Mr. **Chabraja**. And you did not quite understand the legal and factual basis for his schedule D, but whatever it was, you accepted it?

Judge **Claiborne**. Yes. I accepted it.

Mr. **Chabraja**. All right. And it is true, the first part of my statement, you did not understand either the legal or factual basis of the schedule D?

Judge **Claiborne**. I didn't hear you, sir.

Mr. **Chabraja**. Did you understand the legal and factual basis underlying schedule D as Mr. Watson prepared it?

Judge **Claiborne**. No.

Mr. **Chabraja**. OK.

Judge **Claiborne**. No. At that time, no.

Mr. **Chabraja**. All right. And you then put the return away and Mr. Watson, I understand, testified in front of the Portland grand jury and reported back to you about that?

Judge **Claiborne**. Yes.

Mr. **Chabraja**. And as best you could discern from the debriefing, it had to do with issues unrelated to tax? I believe that was your prior testimony.

Judge **Claiborne**. And that's what he said.

Mr. **Chabraja**. Yes. At least that is what he told you?

Judge **Claiborne**. Yeah. That's what he said.

Mr. **Chabraja**. And you had no reason to be concerned, at that point, about the 1980 tax return?

Judge **Claiborne**. No. I, I had no reason to be concerned. I—he—when he—from what he told me, that I was—it was of interest, when he said that they're going to subpoena—I think he said "going to subpoena." Could, I ask him, "Have you already been subpoenaed?" and he said '"No, they're going to. Your returns from 1973 through 1979."

And I said, "Well, if it's not a tax case, I said, why are they subpoenaing a 1973 return, because there's nothing I did in 1973—, wouldn't have anything to do with my disclosure report."

Mr. **Chabraja**. Well, finally we got to the place in time where Mr. Watson went off to Reno, and came back and called you up in the summer of 1983, and began to tell you about the inquiries that were made of him in Reno. Isn't that so?

Judge **Claiborne**. Yes.

Mr. **Chabraja**. And you testified about that on Friday?

Judge **Claiborne**. Yes.

Mr. **Chabraja**. And my memory of your testimony is rather clear, that he reported to you he was asked if you had told him about his—about your 1980 fee income, when he was before the grand jury. He report that to you?

Judge **Claiborne**. Yes.

Mr. **Chabraja**. And he said, "No, I don't have any memory that Judge Claiborne told me about the $88,500." That is what he reported to you?

Judge **Claiborne**. No. That isn't what he reported.

Mr. **Chabraja**. I tell you what: rather than have me try and summarize your testimony, which has been difficult at best, why don't you tell me what Mr. Watson reported to you.

Judge **Claiborne**. What has been difficult at best?

Mr. CHABRAJA. My summarizing your testimony, so I am going to let you do it. You tell me what it was that Mr. Watson said to you when he got home from the Reno grand jury.

Judge CLAIBORNE. He called me on the telephone and he said: "I've got back from Reno from testifying in your case." And he said: "they think you're practicing law while you're a judge." And I said: "What are you talking about?"

He said: "Well, they asked me a bunch of questions about it," and he said, "they think you're practicing law while you're a judge."

And I made a flippant remark. I said, "Well, if you're going to be investigated for something, it's well that it's something that you're a hundred percent sure you did not do."

And we talked further, and I said: "What is the basis for you believing that they're investigating me for practicing law while on the bench?" He said: "The questions they asked me."

I said: "What questions did they ask?" And he said: "They asked me about fees that you received." I said, "Yeah. What about fees that I received?" He said: "They asked me if you ever reported to me that—the fees that you received from practice of law in 1980."

And I said: "What did you say? What did you tell them?" He said: "Well, I said, I told them no, of course not."

Mr. CHABRAJA. What did you say to him, then?

Judge CLAIBORNE. I said to him: "Jerry, you have just indicted me," and I was absolutely right.

Mr. CHABRAJA. All right. What prompted you to say that? What was it about his statement to the grand jury that caused you to believe that you were going to be indicted?

Judge CLAIBORNE. The very fact that they knew already, and I had produced, what I had to them, and I, I knew that they knew that I had collected $88,500 because it was on my disclosure report that they had.

They knew from what we call the yellow sheet of paper that——

Mr. CHABRAJA. Now wait a minute.

Judge CLAIBORNE [continuing]. It was, it was there.

Mr. CHABRAJA. They did not have the yellow sheet.

Judge CLAIBORNE. They had a copy.

Mr. CHABRAJA. Not then they didn't; not if I understand your testimony correctly.

Judge CLAIBORNE. Well, at some time they had a copy of it.

Mr. CHABRAJA. That happened later, wasn't it?

Judge CLAIBORNE. But I knew, you know.

Mr. CHABRAJA. Well, how did—I still do not understand that, because as best you have told me, that it was your understanding that your legal fee income was tucked away safely on your return. Why did you have any concern, no matter what Mr. Watson told them?

Judge CLAIBORNE. Well, I knew that I—when he says that I did not disclose to him $88,500, that I knew that I had $88,500 in income, and if he says I didn't disclose it, well then they're going to indict me. You know that.

Mr. CHABRAJA. Well, did you know it was not on the return?

Judge CLAIBORNE. What?

Mr. Chabraja. Did you know it was not on the return? You do not have any concern if it is on the return. Did you know that that $88,500 was not on the return?

Judge Claiborne. No. I did not.

Mr. Chabraja. Well, then, what was your worry? How could you worry about being indicted?

Judge Claiborne. Because I had made $88,500 that he said that I did not disclose to him.

Mr. Chabraja. But you did not know it was not on your return, you have told us. So what was your concern, Judge?

Judge Claiborne. Being indicted, and I was right.

Mr. Chabraja. Because it was not on your return, ultimately, was it?

Judge Claiborne. Well, it was not on the return. I mean, it was accounts—it was mentioned as accounts receivable and treated improperly. The exact amount, $88,500, was not on my return.

Mr. Chabraja. Let's be candid about this. Your concern about being indicted was because you knew about the aggressive tax treatment on schedule D.

Judge Claiborne. No.

Mr. Chabraja. You were fully aware——

Judge Claiborne. No.

Mr. Chabraja [continuing]. That you and Watson had offset——

Judge Claiborne. No.

Mr. Chabraja [continuing]. $88,500 of legal fee income on that schedule and nobody——

Judge Claiborne. No.

Mr. Chabraja [continuing]. In the world could figure that out.

Judge Claiborne. By this time I knew they were going to indict me if they could conceivably, possible, on anything they could find.

Mr. Chabraja. All right. So, in any event, you concluded that you were going to be indicted and you asked Mr. Watson to get over to your house, right?

Judge Claiborne. No. I said, "Come to my office."

Mr. Chabraja. All right. And he came to your office and the two of you went together to your house?

Judge Claiborne. That's correct.

Mr. Chabraja. And you went, and found a bunch of papers?

Judge Claiborne. I took him direct to my house from the minute he—and just a minute or two after he got into the office, and I'm unhappy with him, and I walked in, and I had moved a lot of my files to my dining room table, and I had them lined up. I was going to file them away, pack them away.

Mr. Chabraja. So they are on your dining room table merely by happenstance, not because you are looking at them?

Judge Claiborne. No, they were by happenstance.

Mr. Chabraja. OK.

Judge Claiborne. And so I went and I looked through them till I found the file that he had returned to me.

Mr. Chabraja. Till you found that exhibit 10, defense exhibit 10?

Judge Claiborne. And I pulled it out and I handed it to him, and I said, "What is the figure in paragraph 2?" And he said: "$88,500." And he shook his head, and he said, "Oh, that's what they were talking about," and I said, "That's what they were talking about."

Mr. **Chabraja**. All right. It was after——

Judge **Claiborne**. And then I looked down and I saw writing on the top page other than myself, and I said, "Whose handwriting is this?" and he said it's Charlotte's. And I said: "Who the hell is Charlotte." And he told me.

Mr. **Chabraja**. It was after this meeting with Mr. Watson, that you now have testified you went and got the return, and studied it carefully for the first time. Is that true?

Judge **Claiborne**. I'd say that's true.

Mr. **Chabraja**. OK. And now, you still did not pick up the absence of any gain reported on 2119 because you told me that you did not do that——

Judge **Claiborne**. I didn't pick it up but I, I—exactly how he did it—because the figures did not jive. There was no $88,500 mentioned——

Mr. **Chabraja**. In the return, anywhere?

Judge **Claiborne**. In—on the return.

Mr. **Chabraja**. This is the first time you have noticed that?

Judge **Claiborne**. I noticed that. And I noticed that accounts receivable from my law practice, before I took the bench, was written out. I couldn't tell how it was treated because I did not find any figure, $88,500, in paragraph 2 of schedule D. And that's why I called him and asked him to come up. I wanted to talk to him.

Mr. **Chabraja**. OK. And then you had another conversation with Jerry Watson where you confronted him with the tax return and said: "Explain this schedule D to me, would you."

Judge **Claiborne**. That's correct.

Mr. **Chabraja**. And you asked——

Judge **Claiborne**. That's why I called him, and he came, he came up.

Mr. **Chabraja**. And you said: what did you do here, how did you do it, with what figures, how can you support this?

Judge **Claiborne**. That's right.

Mr. **Chabraja**. And he assured you that he would go to work on that and figure it all out?

Judge **Claiborne**. No. No, he didn't. He—what he did was: he explained to me how he did it, and I said something to him in effect that, "Well, I don't think you can do that." Or words to that effect. And I said, "Can you support—can you support this with sound accounting practices?"

Mr. **Chabraja**. Now this is your first reaction to it, once he told you what he had really done? You said: "I don't think you can do that."

Judge **Claiborne**. That's what I said.

Mr. **Chabraja**. OK.

Judge **Claiborne**. I said, "I don't think you can do this."

Mr. **Chabraja**. Based on your understanding of ordinary tax principles, you told him: "I don't think you can do this.",

Judge **Claiborne**. I didn't think he could do it, and I, I asked him, I said: "Can you support this, not only with sound accounting practices--but I said—tax authority as well?" And he said yes. And then he said: "Judge, I have taken this return to two people in the

IRS office, in whom I have utmost confidence. One of those individuals works on nothing but audits of cases where the income is over $1 million." And he said, "They both have told me that this return is right."

Mr. CHABRAJA. Was it not about time, Judge, that you took it to somebody to look at it?

Judge CLAIBORNE. You can bet your bottom dollar.

Mr. CHABRAJA. OK. Now, when you closely examined exhibit 27, House managers exhibit 27, did you notice that on line 22, you had shown total income of $54,251?

Judge CLAIBORNE. I didn't hear you, sir. I'm sorry.

Mr. CHABRAJA. Did you notice that you had total income listed on line 22, from all sources, of $54,251?

Judge CLAIBORNE. No. I did not——

Mr. CHABRAJA. You did not observe that, even now?

Judge CLAIBORNE. I may have observed it but I mean, it was no part of our discussion and I don't think it was of any consequence with me at the time.

Mr. CHABRAJA. You were not beginning to be alarmed that you had a judicial income of almost $88,000 of legal fee income and $55,000 in judicial salary and a major gain on a real estate transaction, and yet your total income is less than your judicial salary?

You were not able to say, oh, my Lord, how did somebody do that?

Judge CLAIBORNE. No, I did not.

Mr. CHABRAJA. And did you notice on this occasion that you had paid tax of only $1,103?

Judge CLAIBORNE. No, I did not.

Mr. CHABRAJA. So even after you have thrown your hands in the air and said, oh, my God, I'm going to be indicted, you did not look at this income tax return to see that you had only paid $1,100 of tax?

Judge CLAIBORNE. Well, my feelings are that he just indicted me because he said I did not declare to him. I did not report to him $88,500 worth of income that I knew I had, and I knew that would be all they would need, and it was all they needed because they indicted me, and that was the only thing about my return that they ever urged in all of the prosecutions against me.

Mr. CHABRAJA. Did you go to work right then and there on amending that return?

Judge CLAIBORNE. No, I did not. I wish I had and hindsight is a lot better than foresight.

Mr. CHABRAJA. So even after——

Judge CLAIBORNE. I will tell you why if you want to know why I did not.

Mr. CHABRAJA. I suppose I am going to have to hear it anyway.

Judge CLAIBORNE. I guess you are. You know, I have to listen to you. [Laughter.]

I did not because he said he had taken my return to two IRS agents in whom he had confidence. I thought, well, the return must be all right, and I really did not worry.

Mr. CHABRAJA. So even now after the testimony before the Reno grand jury you retain your confidence in Mr. Watson?

Judge CLAIBORNE. Not now. That would be rather unfair to ask me that question because you know very well I couldn't have any confidence in him now. But up to that point, yes, I still had confidence in him and I still believed him.

Mr. CHABRAJA. Judge, you really want us to believe that in the face of a year when you received income and capital gain that would make most Americans be prayerful on Thanksgiving, you really want us to believe that you signed a return in good conscience and in good faith reliance that Mr. Watson had prepared it correctly when it only reported $1,103 of tax, you really want us to believe that?

Judge CLAIBORNE. Who is we? I don't care what you believe. Who are you talking about "we?"

Mr. CHABRAJA. Let me put it a different way. I'm happy that you quarrel with me because you know what I believe. Do you really want——

Judge CLAIBORNE. Well, you believe whichever side the fee is on.

Mr. CHABRAJA. You really want the gentlemen of the Senate to believe that story?

Judge CLAIBORNE. I would hope that they would believe it, and I am sure that some of them will, but I do not see that has a thing in the world to do with this case.

Mr. GOODMAN. Pardon me, Judge Claiborne——

Mr. CHABRAJA. Let me ask you another question. You watched Jerry Watson testify here. Do you really want the gentlemen of the Senate to believe that anybody, anybody could rely on Mr. Watson in connection with the preparation of their tax return?

Judge CLAIBORNE. Well, I think if that is the final result, you see him in the final end. My dealings with him was in an entirely different spector.

Mr. CHABRAJA. He was a different man then?

Judge CLAIBORNE. He really was, you know. He really was. I mean, for a long time after I was indicted I kept saying to Mr. Goodman that he really believed till this day that he is correct, and I believed that a long time, and I am not sure right now that he doesn't believe that he is correct.

Mr. CHABRAJA. Judge, I have one last matter to clear up with you. House managers' exhibit No. 30——

The CHAIRMAN. Mr. Chabraja, how long do you think your questioning will be?

Mr. CHABRAJA. Just a minute if I may. House managers' exhibit 30 is a letter from you to whom?

Judge CLAIBORNE. A letter to Frank Watson.

Mr. CHABRAJA. Yes. There has been much said about this letter. And you point out in the letter in your own hand that, I quote, "I am desperatelv in need of money."

Judge CLAIBORNE. Yes.

Mr. CHABRAJA. Is that true or false at the time this letter was written?

Judge CLAIBORNE. I take it at the time it was written it was, as I said before, correct, but a slight exaggeration, but I was having—there was a 3-month period there——

Mr. CHABRAJA. One of——

Judge Claiborne. Let me finish, if you will, please. I want to finish because at the trial, the Government argued that I was practically pauperized at this time and so I cheated on my taxes. That was a motive for me cheating on my taxes. So I want to answer this.

There was a 3-month period of time that I was in a serious financial bind. I had entered into negotiations for the sale of my home and an adjacent property to it. I foolishly on the basis of those commitments went and bought a new home, and the sale fell through, and I had to do some scrambling, and the Wyman estate had owed me $37,500 for a number of years and they were in litigation and everything else, and I wrote Frank a letter, and it was the truth.

I did need money. I do not think I was desperate for money.

Mr. Chabraja. And I wanted to clarify that.

Judge Claiborne. But at the time that my return was filed I was not desperate for money.

Mr. Chabraja. As a matter of fact, I think I read in one of your local newspapers in a rather lengthy 20-page—I guess advertisement's the wrong word—but an editorial in the Las Vegas Sun recently that contradicted that particular testimony and said that at that time you had $400,000 of cash in the bank.

Which of those stories is true? Were you in a cash bind?

Judge Claiborne. Well, you are just making speeches to the committee now. You have already asked a question if I was in a financial bind, and I told you, yes, I was. So you know if I had $400,000 in the bank at that time, I would not be in a financial bind.

Mr. Chabraja. That came later when you had $400,000 in the bank. That came a little bit later, after the sale was consummated.

Judge Claiborne. Well, certainly.

Mr. Chabraja. All right. And it wasn't at all financial problems that would provide a motive for you to have understated your income and underpaid your income tax, would it? That is not so at all?

Judge Claiborne. Well, I would say exactly this. That I was not desperate for money at the time my return was filed, so.

Mr. Chabraja. Let me suggest a motive to you, Judge. Was it sheer greed?

No further questions, Mr. Chairman.

Mr. Goodman. Well, I think he can answer the question.

Mr. Chabraja. He may.

Mr. Goodman. You want to answer?

The Chairman. The Judge has the right to answer the question.

Judge Claiborne. Was it sheer greed?

The Chairman. That was the question.

Judge Claiborne. Well, I don't know how you would answer that. I mean, it is a smart remark, and my answer would be simply no, and he knows it.

Mr. Goodman. Thank you.

Judge Claiborne. There is not anything in my whole background anywhere that he can put one finger on that would indicate in my whole professional life or my personal life that I have been greedy.

And I think if I enjoy any kind of reputation on the bench and off of the bench is that I am the first to aid those that need aid. I am an entirely unselfish individual where other people are concerned, and I have always been that.

And I will tell you, sir, your remark wounds me, and I am sorry for that. Because I think you are a very fine lawyer, and it is regrettable that you would engage in such conduct, particularly in view of the fact that I have been a good judge. Nobody can deny that. And I don't appreciate you trying to make me appear otherwise.

The CHAIRMAN. At this point, I think it would be appropriate to take a brief recess. But before we do, let me ask you, Mr. Goodman, do you have some redirect examination?

Mr. GOODMAN. Mr. Chairman, what I would prefer, I would reserve that redirect pending the questions, if any, by the——

The CHAIRMAN. Would either party have any objection if we brought Mr. Watson back after this?

Mr. GOODMAN. I would have no objection.

The CHAIRMAN. You would have no objection? Well, then since you want to defer your redirect until after the committee questions, I think the appropriate thing would be for us to bring Mr. Watson back, and then recall Judge Claiborne at the conclusion of Mr. Watson's testimony.

Mr. GOODMAN. That is agreeable with us.

The CHAIRMAN. We will stand in recess for 10 minutes.

[Recess.]

The CHAIRMAN. Mr. Watson, will you return to the chair?

Mr. Watson, do you recall that you were sworn as a witness in this proceeding, and you understand that your oath is still binding upon you?

Mr. WATSON. Yes, I do, Mr. Chairman.

The CHAIRMAN. Are you represented by counsel today?

Mr. WATSON. Yes, I am.

The CHAIRMAN. Is he present in the hearing room?

Mr. WATSON. Yes, he is.

The CHAIRMAN. Would you like to have him come up and sit near you?

Mr. WATSON. I don't think so.

I would like to just make one request before we start relative to correcting some prior testimony, and I am not sure where that prior testimony was. It was relative to had I brought all of the papers that were pertinent to Judge Claiborne, and I am not sure when the question was asked or where I was supposed to bring the papers.

And I have another yellow paper. This is a document that was in my files. I went through everything I had this last weekend; I reviewed my testimony; and I have one more item that I don't believe has ever been before either of the grand juries or either of the trials that is pertinent to Judge Claiborne's 1980 tax return.

The CHAIRMAN. What is the date of this document?

Mr. WATSON. This is a statement that is headed "1980" at the top. It begins with "Pioneer Citizens Bank," and it lists dates, the month and day in numerals without the year, by the side of which are written amounts of money and various explanations that would indicate where the money came from.

The CHAIRMAN. Who wrote the document?

Mr. **Watson**. This is in Judge Claiborne's handwriting.

The **Chairman**. How did you receive it?

Mr. **Watson**. This was delivered as a part of the yellow papers and the information that he brought to our office prior to the preparation of his 1980 tax return.

The **Chairman**. Was this part of the papers?

Mr. **Watson**. I am sorry, sir?

The **Chairman**. Was this part of the pile of papers that he brought you in the first conversation he had with you on the subject of preparing the returns?

Mr. **Watson**. It was brought prior to the preparation of the 1980 tax return. As I previously testified, I can't recall exactly what papers were brought at which meeting, but this is information that was in our possession prior to the preparation of the 1980 return.

The **Chairman**. Where has it been in the meantime?

Mr. **Watson**. It has been in a file in my office.

The **Chairman**. The whole time?

Mr. **Watson**. The entire time.

The **Chairman**. Never been out of the file?

Mr. **Watson**. Not that I know of.

The **Chairman**. Has Mr. Goodman seen it?

Mr. **Watson**. No. I don't know. In my recollection of the events, I thought I had provided to everybody all the copies I had of everything I had that was pertinent, not only to the grand jury—let's see—the documents the grand juries requested from me were those documents that I had been given by Judge Claiborne prior to the preparation of his return.

After the grand jury, I, of course, accumulated other papers: copies of subpoenas, various other notes that I had made resulting from meetings with the FBI and Internal Revenue Service agents, various notes that I made relative to my testimony at different trials, or at different grand juries that Judge Claiborne wouldn't have known about. So I had accumulated those files.

This was inadvertently a part of that. I was under the impression that I had furnished the defense team with a copy of everything in my possession, and I was certainly under the impression that if I had any records pertinent to Judge Claiborne's tax returns that I had also furnished that information.

I had no reason to withhold the information.

The **Chairman**. Has the managers on the part of the House had an opportunity to see this paper?

Mr. **Watson**. No, sir, no one.

The **Chairman**. I beg your pardon? Who are you referring to?

Mr. **Watson**. Mr. Chabraja. No, Mr. Chabraja has not seen this paper.

Mr. **Goodman**. I don't believe I have either.

Mr. **Watson**. The only way Mr. Goodman would have seen this paper is if it had been in a copy, as I said, of material that I furnished them. But this is an original document.

Senator **Rudman**. Mr. Chairman.

The **Chairman**. Senator Rudman.

Senator **Rudman**. Mr. Chairman, is this the document that was received last Friday that was sealed by the Clerk?

The CHAIRMAN. No; this is not. That document remains under seal.

Mr. GOODMAN. Mr. Chairman, might I suggest that the document that he now has, be given to the Clerk, sufficient copies made for counsel on both sides, for the panel, so we can have it to look at to see what it is that he is looking at.

Might I also suggest that the other document, which I believe Mr. Watson also had in his possession and gave to a member of the defense team, not Mr. Goodman, now be unsealed, put in front of Mr. Watson, let him identify that, and let us also copy that for all the parties to see, and then let us go on from there.

The CHAIRMAN. I think that is the way to do it. Is there any objection on the part of counsel?

Mr. GOODMAN. No objection.

Mr. CHABRAJA. There is no objection, Mr. Chairman, if Mr. Watson is going to answer questions here. If he is going to continue to persist in asserting rights under the fifth amendment, then I don't have any interest in documents that he digs out of his file and just floats in these proceedings.

If he is going to identify them and authenticate them and explain why he didn't produce them before today, then I don't have any objection to that procedure at all.

The CHAIRMAN. Well, the Clerk will take possession of this document, mark it, and provide copies to counsel and to the members of the committee.

Senator PRYOR. Mr. Chairman, may I request that after it is marked that each member of this committee may be allowed for a moment at least to see the original.

The CHAIRMAN. That is a reasonable request, and it will be provided for your inspection.

Now will the Clerk give the sealed document to Mr. Watson?

Now this is the paper which you provided on Friday.

Mr. WATSON. Yes, sir, it is.

The CHAIRMAN. And what is the date of this paper?

Mr. WATSON. This paper doesn't have a date on it. And if I might explain what this is, it is a rough draft, my original rough draft of a letter of explanation or a statement of explanation that Judge Claiborne was testifying about on Friday.

So this is the paper that I began to put my figures on in response to Judge Claiborne's request, that he testified that he had received from me.

The CHAIRMAN. So it is a kind of reconstruction?

Mr. WATSON. This is the reconstruction that he testified to, and this was the reconstruction that I did shortly after that meeting and shortly before I sent in the letter, or delivered the letter to him that he has referred to in his file.

The CHAIRMAN. And do you remember roughly the date of that?

Mr. WATSON. I can't say the exact date of this. This is my recollection. It would have been—it was either immediately after the Reno grand—it was around the time of the Reno grand jury and the Portland grand jury, and that was, one was in March as I recall, and one was in June, so within that 90-day timeframe is when this document was presented.

The **Chairman**. The evidence of this would be if the document that they had was dated and it reflects these same identical figures that are on this document, that would speak for this.

Senator **Rudman**. What year are we talking about, Mr. Chairman?

The **Chairman**. What year are you referring to?

Mr. **Watson**. The year of the grand juries, was that 1983? Right now, I—it was? During the timeframe.

The **Chairman**. So your recollection is this would have been 1983?

Mr. **Watson**. Is that the year that the grand juries—then that is the time it was because I reconstructed—I redid this for Judge Claiborne's concern, and it was done, to the best of my recollection, within that timeframe of approximately 90 days between the grand juries, and I couldn't say which one.

The **Chairman**. And this is your work?

Mr. **Watson**. Yes, sir, this is my handwriting.

The **Chairman**. Your handwriting?

Mr. **Watson**. Yes, sir.

The **Chairman**. And this is work that you did?

Mr. **Watson**. Beg your pardon?

The **Chairman**. This is work that you did personally?

Mr. **Watson**. Yes. I wrote on this sheet personally.

The **Chairman**. Now, Senator Rudman has requested an opportunity to propound several questions to you, so I am going to recognize Senator Rudman.

Senator **Warner**. Aren't we to get the copies of this circulated about if it is going to deal with the document?

The **Chairman**. We will ask the Clerk to make those copies. Do you want to withhold, Senator Rudman, until you have copies before you?

Senator **Rudman**. I don't have that many questions, Mr. Chairman. I have got about three questions.

The **Chairman**. Recover that document, mark it, and provide copies for the counsel and for the committee.

Now, Senator Rudman?

Senator **Rudman**. Thank you, Mr. Chairman. I would like that last document because it ties into a question that I have. I will ask just a few questions of Mr. Watson, and then I would like to ask a question based on that document.

Mr. Watson, you were here when your former employee, Charlotte Travaglia, testified?

Mr. **Watson**. Yes, sir, I was.

Senator **Rudman**. I want to direct your attention to the schedule D that was prepared in relation to the 1980 return. The clerk will give you a copy of it if you would like it.

Would you like to have a copy in front of you?

Mr. **Watson**. I don't need it.

Senator **Rudman**. You are pretty familiar with it?

Mr. **Watson**. Yes.

Senator **Rudman**. All right. You testified, if I recollect your testimony correctly, that Ms. Travaglia essentially constructed that schedule.

Ms. Travaglia testified that she had no idea of any numbers relating to Judge Claiborne's practice or alleged sale of practice, or whatever, and that any figures that she got she had to get from you because Judge Claiborne and Ms. Travaglia had never had a conversation either on the telephone or in person.

Is that true?

Mr. WATSON. That is what she testified to.

Senator RUDMAN. I didn't ask you that. I asked you if that is true.

Mr. WATSON. I thought those remarks were self-serving

Senator RUDMAN. I didn't ask you that, Mr. Watson. I simply asked you if it is true.

Mr. WATSON. Ms. Travaglia did not testify to the truth about my discussions with her relative to the preparation of Judge Claiborne's tax return.

Senator RUDMAN. Well, I will ask you, did you discuss with Ms. Travaglia the methodology that she was to use in preparing schedule D?

Mr. WATSON. It was proposed by Ms. Travaglia in reference to the sheet, the infamous yellow sheet, and I merely agreed.

Senator RUDMAN. You are telling us that Ms. Travaglia came up with the scheme of constructing a sale in schedule D when, in fact, there wasn't a sale?

Mr. WATSON. I am not telling you that at all. What I am telling you is we had a discussion about taking a loss by virtue of Judge Claiborne having closed down his law practice.

Senator RUDMAN. Had you discussed that with——

Mr. WATSON. Wait a minute.

Senator RUDMAN. Go ahead.

Mr. WATSON. We had a discussion about that early on. That prompted, as I recall——

Senator RUDMAN. Who is we, Mr. Watson?

Mr. WATSON. Ms. Travaglia and I.

Senator RUDMAN. All right.

Mr. WATSON. That early on conversation, as I recollect, caused the memo to come back to me on the yellow sheet of paper, which had the arrow indicating the $88,000 drawn down to the bottom of the page, which to me was indicating that she was going to use the $88,000 in some form of write-off or reduction in the value of that business. I agreed.

I can see now that that was an error.

Senator RUDMAN. That was what?

Mr. WATSON. That was an error. That has been very clearly made to me.

Senator RUDMAN. Well, whether it was an error or not, Mr. Watson, let's now get down to how that came up. Obviously you are not asking this panel to believe that two people in an accounting practice, independent of the client, sat down and constructed a wholly artificial series of transactions resulting in a loss.

Are you going to tell us that here today?

Mr. WATSON. I have testified to this for the last 4 years.

Senator RUDMAN. Try it again.

Mr. WATSON. We had a discussion that resulted in my agreeing to the fact that the law practice was worth a minimum of $250,000.

I based that on the fact that I had previously discussed with Judge Claiborne some of the pertinent facts about his law practice.

There were a couple of attorneys in town I knew that had negotiated with him, by rumor or however. I had not confirmed that. It was my belief, and I had no reason not to believe it, that two attorneys had discussed with him figures that were around the half-a-million-dollar range.

Senator **RUDMAN**. Who told you that?

Mr. **WATSON**. Judge Claiborne I believe is the source of the exact figure, the half-million dollars.

Senator **RUDMAN**. Did Judge Claiborne, in those discussions you had with him prior to the preparation of the return, discuss the value of his client list?

Mr. **WATSON**. No, sir, he didn't.

Senator **RUDMAN**. Or value of his phone number list?

Mr. **WATSON**. No; I don't believe he specifically did.

Senator **RUDMAN**. How about uncollected accounts receivable?

Mr. **WATSON**. In the course of our conversations we have touched on these elements that you are referring to.

Senator **RUDMAN**. I just asked you a specific one. Did you discuss that with Judge Claiborne? That is a simple question.

Mr. **WATSON**. Yes, I am sure I did.

Senator **RUDMAN**. And how about good will in 26 years in practice? Did you discuss that with Judge Claiborne?

Mr. **WATSON**. I can't say for sure that I did, but I did or if I didn't, it is on the sheet that you are looking at; and if I were valuing a practice, I would take some arbitrary figure in.

Senator **RUDMAN**. Well, when you say arbitrary figure, I want to get this very accurately

Mr. **WATSON**. OK.

Senator **RUDMAN**. You are certainly not telling us that you sat down all by yourself, Jerry Watson, and put together some numbers. Let me finish my question. I assume what you are telling us, and you then answer in your own words, that you discussed this with Judge Claiborne, and after he gave you some idea of what he considered various valuation, then you fine-tuned it. Is that what you are telling us?

Mr. **WATSON**. Not exactly. I believe you are attempting to bring in two different things at the same time. One, Is did I have discussions with Judge Claiborne about the value of his law practice? I have previously testified to that. That we had brief discussions, in-depth discussions on various occasions, and I don't remember the content of all of those.

We did discuss valuing the law practice. Now what you did, you shifted me over into the yellow paper in front of you, and you are going to question me on that. And what I have already said in my opening remarks is that this is a re-creation to illustrate to Judge Claiborne how we could justify a value of $250,000 on that tax return.

And I told you in my opening statement that I did that after the return was filed.

Senator **RUDMAN**. I understand that, Mr. Watson.

Mr. **WATSON**. OK. So those specific figures you are looking at represent a re-creation that I did after the tax return at the judge's request without discussing that particular piece of paper with him. That is specifically how that originated.

Senator **Rudman**. Mr. Watson, let's go back then to the time that you prepared the Judge's return. Did you discuss with him the possibility of constructing a schedule D to show a substantial loss and thus lessen the impact of Federal income taxes on his 1980 return?

Mr. **Watson**. To be—to answer your question as being extremely precise, I don't ever recall discussing a schedule D or an E or a C, or any other schedule, with a client. I merely discussed with him what it was I thought was possible.

I thought that was possible because, to be honest with you, I thought it might have something to do with an involuntary conversion or—I didn't know exactly how that was handled. When someone goes on the bench, ordinarily you have partners that take over your practice or you have a corporation that can be put into a blind trust. I knew this man to be a sole proprietor. I knew that he had suddenly shut the doors. I presumed there would be some kind of a loss, and, yes, I had discussed that with Judge Claiborne.

Senator **Rudman**. All right. So in order that we get this in the fairest possible light to Judge Claiborne, is it fair to say that, from your memory and from your prior testimony, in the course of your discussions with Judge Claiborne prior to the filing of his 1980 tax return that there were discussions about potential ways of lessening impact based, based on the closing of his law practice?

Mr. **Watson**. We discussed—your question is extremely specific, so I am sure you are reaching for something specific. I have no idea what it is.

Senator **Rudman**. Why don't you just answer the question, Mr. Watson, and not worry about what I am getting at. I only want the truth. If you remember, tell me. If you don't remember, tell me. But don't worry about what I am getting at. I just want you to answer the question. It is very simple, Mr. Watson.

Mr. **Watson**. OK. Please ask it again.

Senator **Rudman**. My question was simply this: That prior to Judge Claiborne's 1980 tax filing, did you and the Judge discuss in detail the various components of his former law practice and how you might use that to create a loss that would help in the filing of his 1980 tax return?

Mr. **Watson**. We did not discuss that in detail. We discussed it.

Senator **Rudman**. All right. You did discuss it. How long did you talk about it?

Mr. **Watson**. I couldn't recall. I have already testified I can't recollect the length of these various meetings or when they occurred, I just know they did occur.

Senator **Rudman**. Now the 2119 that you prepared in your office, Ms. Travaglia says is not in her handwriting, that she did not prepare the 2119. Who prepared it?

Mr. **Watson**. I believe there are four number entries on that that Ms. Travaglia—well, I don't know how many entries are on there. The entries—let me take a look.

Senator **Rudman**. Would you give the witness from the House file, I believe it is number 27?

Mr. **Watson**. Yes. This is in my—I previously testified that this is in my handwriting.

Senator RUDMAN. That is in your handwriting?

Mr. WATSON. I believe I have previously testified that this is in my handwriting.

Senator RUDMAN. Ms. Travaglia, however, told you how to do this?

Mr. WATSON. No. I believe I tried to rough through this one myself.

Senator RUDMAN. All right. I only have one other question.

You testified on the 17th it was Ms. Travaglia who, in fact, came up with the $250,000 figure that is on the schedule D in that return which is in front of you.

Mr. WATSON. That is what I recall, Senator Rudman.

Senator RUDMAN. Her testimony is that she got that figure from you. Do you want to reconsider your testimony?

Mr. WATSON. Well, let's put it this way. My recollection of the event is what I testified to. That the $250,000 constituted a rather low price for this return, and I agreed with it.

Senator RUDMAN. Last question I have for you, Mr. Watson.

Did you ever tell your client, Judge Claiborne, that the schedule D that you were working on with these hypothetical transactions might lead to a problem because the schedule D calls for actual sales and there was no sale?

Did you ever discuss that with the Judge?

Mr. WATSON. Specifically what you just said, that since it deals with a sale and this was not exactly a sale? I do not remember discussing distinctly that part. The reference I think you are referring to on my prior testimony dealing with this document was what somebody else testified to. And what I would testify to is they are probably right; that sounds like something that I would say.

In the event any question came up about a tax return, I have testified that I own the company, I don't do the work, hardly ever get involved in it, don't know much about what is going on. You have done a very good job of establishing my level of competence in doing tax returns.

Now, from that I might answer your question by saying, yes, you might get audited or there might be a problem with this.

Senator RUDMAN. Did you ever tell Judge Claiborne that this return was going to be filed in a very aggressive way, that it might be audited but you thought it was all right?

Mr. WATSON. I never used the word "aggressive."

Senator RUDMAN. Well, did you use any word?

Mr. WATSON. I don't re—the interviews I had with Judge Claiborne I can't specifically say now. I know one thing I was vague about. The first meeting of the tax return, or the first delivery, I testified that I didn't know whether I delivered it or he came and picked it up.

My recollection was that I delivered something the first time he had a tax return done.

Senator RUDMAN. At any rate, Mr. Watson, and this is my last question. I guess your testimony as to the schedule D, as far as your relationship with Judge Claiborne, is that although you can't tell us whether it was a long discussion or a short discussion or what went into that discussion or who came up with what number or what numbers were discussed, there is no question in your mind that you and Judge Claiborne discussed the using of a schedule D to somehow lessen the impact of taxes on him for fiscal year 1980, calendar 1980?

Mr. WATSON. I will answer that question by saying I cannot be that specific. I can't answer your question as specifically as you ask it.

Senator RUDMAN. Well, I think you answered it about 10 minutes ago, Mr. Watson. Let me restate it.

Mr. WATSON. Well——

Senator RUDMAN. Let me restate the question. Because if you can't answer that one, I am going to give you one I hope you can answer.

Mr. WATSON. OK.

Senator RUDMAN. Is there any question in your mind whatsoever that you and Judge Claiborne discussed the preparation of a schedule on his return that would reflect items that might lessen his income tax for 1980 because of sales that, in fact, did not take place?

Mr. WATSON. I think I answered that question previously by saying specifically referring to the document as a schedule D, I would probably not have referred to that document as a schedule D, and I cannot reflect any more than I have already testified to.

It would be in character for me to answer a question if you ask it. It might be in character for me, if I was perusing through your return with you as casually as we did this one, that I might have made some comment about a page. I can't recall specifically what I said to Judge Claiborne or what Judge Claiborne said to me.

Senator RUDMAN. As far as schedule D is concerned?

Mr. WATSON. As far as the whole tax return is concerned.

Senator RUDMAN. You said 10 minutes ago that the two of you discussed various components of his law practice.

Mr. WATSON. That is correct.

Senator RUDMAN. And that you were going to be using some of that on the return.

Mr. WATSON. That is correct. But it had no reference to a schedule D.

Senator RUDMAN. That is fine. But there is no question you discussed certain elements of his former law practice——

Mr. WATSON. We certainly did.

Senator RUDMAN [continuing]. In terms of this return?

Mr. WATSON. In terms of this return. As to how they would be applied on this return, I do not recall discussing that with Judge Claiborne. I may have.

Senator RUDMAN. Well, we will ask Judge Claiborne when he is examined by the panel.

Thank you, Mr. Chairman.

[Whereupon, committee exhibit No. 6 was marked for identification.]

The CHAIRMAN. Senator Pryor.

Senator PRYOR. Thank you, Mr. Chairman.

Mr. Watson, Judge Claiborne testified this afternoon earlier that after you returned from Reno and after you had been interrogated or quizzed by the grand jury there, he testified that you had a conversation with him. He also stated that you said that two IRS agents had told you that this income tax form was all right or the method you used in arriving at the figure of taxes owed, or whatever, was all right.

Did you actually talk to two IRS agents about Judge Claiborne's taxes?

Mr. WATSON. Yes, I did. I previously testified to that.

Senator PRYOR. Yes. Now what are those agents, by name? What would be their names?

Mr. WATSON. I previously testified it is Noriko Lowe and Earl, or Ed White.

Senator PRYOR. And they are stationed in Las Vegas?

Mr. WATSON. They are stationed in Las Vegas.

Senator PRYOR. Did you show them the entirety of the return, or that return on the sale of the home and the fees and everything?

Mr. WATSON. No, sir, I didn't.

Senator PRYOR. What part of the return did you show them?

Mr. WATSON. I didn't show them any part of the return.

Senator PRYOR. What did you ask the agents?

Mr. WATSON. I discussed with both of them my grand jury testimony. That the grand jury and the Internal Revenue Service and the FBI was kicking up—or creating, it looked to me like some sort of an investigation, and that they raised some issues that I thought might have to do with that tax return.

And I explained to them that I had—not in detail. I explained to them what I had done with the law practice. That I had taken a loss on his law practice because it closed. I do not recall having a real specific discussion with them.

When I relieved Judge Claiborne's mind, it is possible that I may have given him the impression that something of a great deal more detail may have taken place.

Based on what the IRS agents told me, which I think has some merit, if there is a problem with the return, it could be settled with an office audit; if you think there is anything wrong with it or if you are not satisfied with it.

I suggested that same thing to the grand jury on one occasion. If they felt there was something wrong with that tax return, why don't you submit it to audit?

Senator PRYOR. Ms. Travaglia stated under oath, that she mentioned to you on more than one occasion that she felt that there were problems with the Claiborne tax return. Did she tell you this?

Mr. WATSON. I heard her testify to that.

Senator PRYOR. Now when she more or less———

Mr. WATSON. That's not answering your question that yes, I agree that she said it. I heard her testify to that.

Senator PRYOR. Yes. In other words, she raised a flag?

Mr. WATSON. She said she did.

Senator PRYOR. A red flag on the Claiborne tax return?

Mr. WATSON. Well, I don't think it's a red flag. She—we had some small discussions. I don't recall any discussion that she had indicating a major problem with the tax return.

Senator PRYOR. But Mr. Watson, what I am trying to do is ascertain did she, in the office, actually tell you that she felt there were problems with the return?

I am not talking about what you heard here before the Senate committee.

Mr. **Watson**. OK. As I testified previously, I don't recollect that we had a discussion relative to problems.

Senator **Pryor**. She also stated that she felt that this form of the taxes to be sent to IRS, that it was not in final form, that it was pencil, that there were arrows, and marks, and this, that and the other.

What led you to believe it was in final form and ready to be mailed?

Mr. **Watson**. Well, let me explain that to you. I don't make those judgmental decisions in my office about whether anything is in final form and ready to be mailed. I don't now and I haven't in the past, particularly relative to bookkeeping and tax matters.

I simply don't make that decision.

Senator **Pryor**. Did you in fact have a CPA, or someone with great tax abilities to look at tax problems? Someone stationed, or someone living in another State, specifically, in Arizona?

Mr. **Watson**. As I previously testified I do—I can probably drag you up a name of someone I know in Arizona that is a CPA. I know any number of——

Senator **Pryor**. Are they associated with your firm?

Mr. **Watson**. No member of my firm. I have no members of my firm, that to my knowledge, are CPA's.

Senator **Pryor**. Did any CPA ever look at this return before it was sent to the IRS?

Mr. **Watson**. No.

Senator **Pryor**. All right. Now I have two or three other questions, Mr. Chairman. I do not want to take too long, and I will make them quick. This document has just been presented to the committee, committee exhibit 6. Is this correct?

I would like to know, if I could, just how did you go about finding this document? Did you find it this weekend? Did you go back home and say, "My gosh, I know where there's a file and there's a document that might help Judge Claiborne?"

How did you go about this?

Mr. **Watson**. Well, no, that's not the way I did it. As a matter of fact, to be completely and absolutely candid with you, this is what happened.

I came up here and was under a considerable amount of pressure; felt intimidated, if I can use that word. I felt that everybody in here was attempting to make me the scapegoat for this problem of which I have no problem with sharing, or taking responsibility for my role.

I was distressed by the defense. So, when I left here Friday, I got home at 3 o'clock in the morning, and the first thing I did was review everything I had, reread my testimony, and made a thorough search of my facilities.

That yellow piece of paper that I just gave you today was in the file folder that I had carried up here with me, out of which I had pulled the first yellow piece of paper. That file happens to be the last remaining files, to my knowledge, that I have of Judge Claiborne's.

Senator PRYOR. And did you tell the Reno grand jury that you knew of $88,000 in fees that was not on the tax return?

Mr. WATSON. No. I did not tell—as a matter of fact, when they asked me about his collecting fees during the tax year 1980, I believe I testified, I didn't believe he collected any fees during 1980.

Senator PRYOR. But you had before that, testimony before the grand jury for some number of years, you had this legal pad with $88,000 in fees that Judge Claiborne had earned, that he had turned over to you, this information, is that correct?

Mr. WATSON. That is—are you referring to the $88,256, or whatever it is?

Senator PRYOR. $88,286.83. The last page. The third page of this exhibit.

Mr. WATSON. OK. You're absolutely correct. This piece of paper has been in my possession the entire time.

Senator PRYOR. And you failed to tell the grand jury about these fees?

Mr. WATSON. Absolutely. And let me explain that to you. These documents were delivered to my office in 1981, sometime in the spring. I can't exactly remember when. The files that are brought into my office to have tax preparation work done are turned over to that person, or, the little office that we have set up that does that, and that's where it went. To be perfectly honest with you, I had no reason to review that information when I was subpoenaed before the grand jury, since there are any number of files. I never reviewed this.

So, when I went, I was surprised that they were questioning me about fees, and I don't recall that they asked me about $88,500, is a grand jury question. They asked me about——

Senator PRYOR. You said you did not have any reason to do it. Was not the fact that a U.S. Federal district judge was being looked at, and you were his accountant at the time, they were looking at his tax returns, he ultimately was indicted, he ultimately was convicted, he has been in jail now since May, and he may be impeached by the U.S. Senate and the House of Representatives, and you did not see any reason to bring out what, the information you knew about the fees that he had earned, that he had told you about?

This is astonishing.

Mr. WATSON. You are failing to understand. I have testified in the Reno grand jury, answered questions relative to "Did he collect legal fees." I have previously testified the $88,500, or such number, was in my mind as accounts receivable. Maybe I perceived too much. Maybe I perceive what you want to know. My perception of the grand jury attorney was that he was trying to determine if Judge Claiborne was collecting money currently for doing legal fees, but in more specific terms, what they were referring to there was, did he collect bribes.

Senator PRYOR. Mr. Chairman, for the moment, that is all the questions I have. Thank you.

The CHAIRMAN. Senator Warner.

Senator WARNER. Thank you very much.

The CHAIRMAN. Senator Warner, could I just ask one question.

Mr. WATSON. Go right ahead, Senator.

The CHAIRMAN. You testified here, that it was your custom to return to your clients——

Mr. WATSON. That is correct.

The CHAIRMAN [continuing]. All of the papers that they gave to you.

Mr. WATSON. That is——

The CHAIRMAN. Now why did you not give this piece of paper back to——

Mr. WATSON. That is correct.

The CHAIRMAN [continuing]. Judge Claiborne?

Mr. WATSON. This is again not at all uncommon in my office. In attempts to return people's files to them, I've lost them. I have a case right now that we lost the file, could not find it for 2½ months, a very important file. We finally discovered it sitting in a box on the edge of the Secretary's desk. It was misplaced; not where it's supposed to be. What I did, to the best of my recollection, was purge the files that the client needs because I have no reason to retain this. This inadvertently was not there.

I can appreciate your suspicion of the document. I appreciate that. I am just testifying to what happened. This paper, as mysterious as it may seem, has been in my office, and I had not seen it, and when I testified before the Reno grand jury, I could not make a connection between what he was questioning me about and what I knew.

And that's what prompted the telegrams, is when my memory was refreshed, after looking at the original document that we had given back to Judge Claiborne, which, as I recall, was a part of this material, or came in about the same time.

The CHAIRMAN. Senator Warner.

Senator WARNER. Mr. Watson, you have made the statement, it was not you who made the decision in your office, that the time had come that a tax return was final and that it was ready to file?

Mr. WATSON. That is correct.

Senator WARNER. If you did not make that decision with respect to the 1980 return, who did?

Mr. WATSON. After reflecting upon what I have seen and heard, it appears that my Secretary, Adelle Farrell, must have made that decision. And you might find this ironic, that at the time Mrs. Farrell worked for me, Mrs. Farrell's daughter was employed in Mr. Yablonsky's office. I don't believe there is any connection, but it is a small town.

Senator WARNER. We continue to have surprises in this trial.

Now, is she available to be a witness before this——

Mr. WATSON. Unfortunately, Mrs. Farrell is deceased.

Senator WARNER. That is a tragedy. I do not see the humor in it, but anyway, what were her qualifications, as best you can recollect, with respect to the preparation of a tax return?

Mr. WATSON. Mrs. Farrell's qualifications——

Senator WARNER. Yes.

Mr. WATSON [continuing]. In respect to a, doing a tax return?

Senator WARNER. If she had the decision power to determine when a return was in final form and ready to file, it would be my assumption she had some knowledge about the subject of tax returns.

Mr. WATSON. As a matter of fact—and no disrespect to the deceased—Mrs. Farrell was a very, very nice lady, 65 years old, looked 55; not the most competent Secretary I've ever had. As I'm reflecting back on this, the way the process is—and this will clear it up for you—I superficially hold myself out as a person who can handle problems. It says it on that letterhead. What I actually do in our company is, I get new business in. I spend time making business and social contacts, and people come into my office. I don't advertise. I don't even have a—I don't even have an ad in the Yellow Pages.

So it's my personal contact and involvement. Once you come into the office with whatever problem it is that you have, I attempt to establish, and get enough information from you, or give you enough information to go back and get it, to bring it back into my office.

Once it's brought back in, I don't do that, and I can produce you probably 40 or 50 people who know me well, and know how my practice works well, that would also testify, under oath, that that's exactly how it's done.

When that work is completed by whoever it's been assigned to, if it requires my signature, I sign those. That particular tax return bears my actual signature. Of all the tax returns that I prepare, there may be two or three others. I don't even remember the circumstances of why I signed it.

Senator WARNER. Who would have signed it, had you not signed it?

Mr. WATSON. My Secretary.

Senator WARNER. Mrs. Farrell.

Mr. WATSON. Oh-huh. All it requires is to have your name written on it.

Senator WARNER. Right. I understand. And I return to the question——

Mr. WATSON. Mrs.—well, let me be more specific.

Senator WARNER [continuing]. What were her qualifications——

Mr. WATSON. Let me be little more——

Senator WARNER [continuing]. To accept the responsibility in your office, quote, "to make the final decision if a return was in form, ready to file?" End quote.

Mr. WATSON. What were her qualifications? Absolutely none.

Senator WARNER. Now let me just turn to another line of questioning. In the Federal Circuit Court of Appeals case, 765 Federal Reporter, 2nd Series, *United States of America* v. *Harry E. Claiborne,* the court pointed out the following law: "A defendant cannot shift his responsibility for deficiencies to an accountant if the defendant has withheld vital information."

My question: Do you have any reason to believe that Judge Claiborne, at any time in connection with the preparation of the 1980 return, knowingly withheld from you any vital information?

Mr. WATSON. I do not believe he did and I have repeatedly testified to that.

Senator WARNER. Did you have knowledge of defense exhibit No. 1, which purports to be his filing with the Federal court system of his financial assets for that year, in which the document reflects past fees from law practice of 88,500?

Mr. WATSON. Are you asking me have I ever seen that form?

Senator WARNER. Yes.

Mr. WATSON. I may have. It was not shown to me by Judge Claiborne at the time we filled out his return, nor did my firm complete that return, this form.

Senator WARNER. This relationship that you had with Judge Claiborne, after the filing of the return, he asked you to come to the office, you went and sat down, and explained to him the return, is that——

Mr. WATSON. I never testified to that.

Senator WARNER. Well, you have no knowledge of that having taken place?

Mr. WATSON. I have knowledge—like I told you, my recollection was, I delivered, and I believe I previously testified, that on one or the other of the occasions I actually delivered the tax return.

Since we have—and I don't have any reason to disagree with it—that it was picked up—but I did go to his office. What I delivered was a copy, and an invoice. And as I recall, that meeting was 10–15 minutes.

Senator WARNER. Was there a discussion of the contents of the return at that time?

Mr. WATSON. My testimony has, I believe, consistently been, that we, if, made a review—if any—very casually. I believe I may have—it may have been out in my testimony once, that we had flipped through the form.

Senator WARNER. All right.

Mr. WATSON. No intense examination of that return was made.

Senator WARNER. It is my hope that we can probe into the 1981 return in the hopes it throws some light on how the 1980 return was prepared.

Am I not correct, that you prepared the 1981 return?

Mr. WATSON. Yes. My firm did that.

Senator WARNER. And this evolved from a continuing relationship that you had with the judge?

Mr. WATSON. That's correct.

Senator WARNER. And between the preparation of the 1980 return and the 1981 return, how many times did you visit with the judge, either professionally, or socially, or otherwise?

Mr. WATSON. I have previously testified to that but I can't recollect exactly how many times we met, and this is, it's speculation, but in the course of dealing with a taxpayer that has a business, or brings its material in slowly, I would say I may have as many as six meetings with him. Certainly more than one.

Senator WARNER. Turning, now, to this new document marked committee document No. 5, which was produced late Friday afternoon by defense counsel, and is alleged to have come from you and passed to one member of his associates; is that correct?

Mr. WATSON. Just a minute. You went a little fast for me. Ask me that again.

[Whereupon, committee exhibit No. 5 was marked for identification.]

Senator WARNER. Do you recognize committee exhibit No. 5?

Mr. WATSON. Oh. Yes. OK. That's this.

Senator WARNER. Correct. And this consists of three pages.

Mr. WATSON. Two pages.

Senator WARNER. Well, why do I have three?

Mr. WATSON. Oh. OK. There are some scribbles on the back of this.

Senator WARNER. Fine. So that is on the back of page 2 or 1, or——

Mr. WATSON. Yeah. Yes, sir. That's this.

Senator WARNER. Now directing your attention to—it is page 3—but it has here: "Capital loss carried forward to 1981, $97,000."

Mr. WATSON. That's correct.

Senator WARNER. Did you make that notation at the time you were preparing the 1981 return?

Mr. WATSON. No, sir. I testified, or my statement was——

Senator WARNER. But this document in its entirety, then, was composed in about 1983——

Mr. WATSON. Yes, 1983, at the time of the grand jury, and the purpose for it was——

Senator WARNER. Do you have working documents in connection with the preparation of Judge Harry Claiborne's 1981 return, which would recite a carried forward loss of $97,000?

Mr. WATSON. Do I have a copy of his tax return, or did I do it?

Senator WARNER. Do you have any documentation in connection with his 1981 return?

Mr. WATSON. I have——

Senator WARNER. The point I am making is, it appears to me, that you repeated, in 1981, the same theory that you initiated in 1980, of carrying forward a loss in this business and perhaps writing off income against it.

Would that be a correct assumption?

Mr. WATSON. I think that would be a correct assumption.

Senator WARNER. Well, perhaps there will come a point in time in this proceeding where we will have access to the 1981 return, and I hope that you will be available to return and perhaps explain it.

Who worked on that return with you, the 1981 return?

Mr. WATSON. I can't recall whether it was—I believe Charlotte had resigned by then, and the lady that prepared, or the next employee that I had was a lady by the name of Mrs. Peggy Kotecki.

Senator WARNER. Now since the 1980 return was filed, the refund check had been received, you then prepared the 1981 return using the same basic schedule D format, is that correct?

Mr. WATSON. I would assume that is correct based on my notes.

Senator WARNER. I would hope there would come a point in time when we have an opportunity to look at the 1981 return because there seems to be a pattern here that you successfully obtained a refund based on the 1980 return, and you used the same theory. And did you get a refund on the 1981 return?

Mr. WATSON. Senator, what you're saying is probably correct. The tax returns would tell

What I'm telling you is that it was a continuing thing. I thought the return was filed correctly. I thought the employee knew what she was doing. I had no reason to question it. And the next employee would be no different.

Senator **Warner**. The importance of my line of questioning is whether or not you and Judge Harry Claiborne, in connection with the preparation of the 1981 return, reviewed how it was done in 1980 and he more or less indicated to you let's try her again in 1981?

Mr. **Watson**. Judge Claiborne never made any such indication or representation to me of let's try it again in 1981.

Senator **Warner**. But it was tried again in 1981?

Mr. **Watson**. As far as I know, the returns have been filed consistently from the time they were started.

Senator **Warner**. Did you do the 1982 return for the Judge?

Mr. **Watson**. Yes. I believe we testified to that.

Senator **Warner**. Mr. Goodman, Mr. Chairman, is indicating he seeks recognition, has a document in his hand.

The **Chairman**. Mr. Goodman.

Mr. **Goodman**. Yes, Mr. Chairman.

I understand the Senator's interest in the 1981 tax return. We do have one with us. And I will advise that it has been amended. But for purposes of the Senator's questioning, I'll be happy to make it available.

Senator **Warner**. I thank the counselor.

Senator **Heflin**. Mr. Goodman, as I understand it, there was an offer made, I suppose by the defendant, at the trial of the other case, and Judge Hoffman ruled it, would not allow it.

Is that copy of the return the way it was in the exhibits available rather than your copy?

Was it identified? Was it marked for identification?

Mr. **Goodman**. I'm not sure. I'm not sure whether it was just argued without it actually being marked for identification and then rejected. But this would be the return that we were talking about.

Senator **DeConcini**. Well, Mr. Chairman, may we have copies of that?

The **Chairman**. Certainly.

Mr. **Goodman**. May I approach the clerk with it?

The **Chairman**. If you'll approach the clerk, the clerk will mark it and provide copies for the committee and counsel.

[Whereupon, committee exhibit No. 7 was marked for identification.]

Senator **Warner**. Mr. Chairman, perhaps I could withdraw from questioning now and after the examination, return and be given another opportunity.

The **Chairman**. All right.

Senator Pressler.

Senator **Pressler**. Mr. Chairman——

Mr. **Goodman**. In response to Senator Heflin's question, Mr. Chairman, it was our intention to admit in the trial the 1981 return. That was rejected by Judge Hoffman.

Senator **Pressler**. Mr. Chairman, many of my questions have been answered. But let me ask, on exhibit No. 6, what were the entries—there's an entry on 4-23 listed as forgeries 11, 460, 4-28, $4,450 forgeries and 5-16. Now, this is the one that is in Judge Claiborne's handwriting, is that right?

What do those mean, forgeries?

Mr. **Watson**. I don't know. I was reviewing it today. We were trying to figure out if that's actually the word "forgeries" as in fraud or somebody's name.

Senator **Pressler**. I see.

Now, specifically, did Ms. Travaglia have this document when she prepared the income tax return?

Mr. **Watson**. As far as I know, this was attached as a summary. As far as I can recollect, this was attached as a summary to the other sheet of paper that you have that has the $88,000 on it that has her handwriting on it.

Senator **Pressler**. In other words, you're saying that the $88,000 was arrived at by Judge Claiborne and it went to Mrs. Travaglia?

Mr. **Watson**. Yes, on that—the other—the first yellow sheet of paper.

Senator **Pressler**. This sheet, Exhibit 6?

Mr. **Watson**. It is my summation that this is or was attached to the sheet of paper where Judge Claiborne wrote down a summary of what the income was. As a matter of fact, when you look on the last page, this doesn't total up to $88,500 It totals up to $88,256.83.

Senator **Pressler**. Well, then, in other words, for the first time, I think it's very significant if Ms. Travaglia had this sheet of paper, then we know where some of the numbers came from which was a mystery up to this point.

Mr. **Watson**. No, it wouldn't throw any light at all on it. What this appears to me to be is the summary of what the $88,500 is that Judge Claiborne wrote down on the form that was delivered to my office. This is——

Senator **Pressler**. OK. What I'm trying to get to, maybe this is a more—what would you suggest that I, as a member of this committee, what new things should I conclude from exhibit No. 6?

Mr. **Watson**. I don't think you should conclude anything new.

Senator **Pressler**. But this was your suggestion, that this was used by Ms. Travaglia.

Mr. **Watson**. No. What I testified to and where we're getting confused here is the judge gave me a summary sheet that started off, as I recall, and it's exhibit—what exhibit is that? Which is the yellow sheet?

Mr. **Goodman**. Mr. Chairman, that would be exhibit 10.

Mr. **Watson**. May I refer back to that exhibit?

This is what I supposed that this is, and what it appears to me to be, it was remaining in my files I believe that he did this, this sheet tells you what the $88,500 consists of.

Senator **Pressler**. And that was prepared before, and you believe that that came into your office and was in your office, and Ms. Travaglia had this when she prepared the return?

Mr. **Watson**. I believe it was in the file. Whether she had it physically in her possession, or would have even referred to it.

Senator **Pressler**. OK.

Mr. **Watson**. If it was there, it was there. As far as is necessary, it isn't. The $88,500 is very prominent here

Senator **Pressler**. Well, what can I conclude? What are you suggesting with that document? What does it tell us?

Mr. **Watson**. I'm not suggesting anything.

Senator **Pressler**. OK. Now, on the document No. 5—will you turn to that—what can I as a committee member—that's a new document—what can I conclude new from that that we didn't know before?

Mr. **Watson**. The one thing that this document tells you is that Judge Claiborne at some time after the tax return was filed raised the question with me whether or not I could document the value used on his business and my procedure? I had——

Senator **Pressler**. This one is in your handwriting?

Mr. **Watson**. Yes, it's my handwriting.

I had no reason to believe that I couldn't. So I recreated this document where I wrote down everything on there about the business, and what I didn't know I made an assumption on.

Senator **Pressler**. For example, the phone number on the yellow page——

Mr. **Watson**. That's merely a guess. That is what I figure that's worth.

Senator **Pressler**. OK.

Mr. **Watson**. Now, I realize this is causing you a little bit of concern. But you have to appreciate this is my opinion. That's based on a lot of factors. If you wanted to buy my phone numbers, I would probably want $5,000 for them.

Senator **Pressler**. So, in other words, you wrote this after the fact?

Mr. **Watson**. Yes, I——

Senator **Pressler**. You saw Ms. Travaglia's number which she thought she had arrived at independently?

Mr. **Watson**. That's correct.

Senator **Pressler**. So, for the first time, you asked her—did you consult her about this?

Mr. **Watson**. No. See, this was 2 or 3 years after the tax return was done. Ms. Travaglia, as I recall, was not employed by me when I created this piece of paper. She was not there to have any discussions with.

But I want you to be very clear on the $250,000. That number is on that tax return because I concurred with the one whose handwriting it's in, that that sounds reasonable to me.

Now, the problem arose. The grand jury came up. Questions. And Judge Claiborne in particular is calling me and wanting to know can you justify those figures. Well, I thought I could. If I hadn't thought I could, we would never have gotten involved with any loss on the tax return. So he asked me how.

I've had very little experience in evaluating things, and what I did was I made him up a sheet of paper that would establish what I considered to be a reasonable value for his law practice.

Senator **Pressler**. Well, one final question now.

For example, in the sale of a law practice, you have goodwill from 26 years in practice, $110,000, the value of that goodwill.

How was that arrived at?

Mr. **Watson**. That's just my estimation. That's my opinion.

Senator **Pressler**. Thank you very much.

Senator **Gore**. Mr. Chairman.

The **Chairman**. Senator Gore.

Senator GORE. Mr. Watson, I'd like to continue asking you a couple of questions about this same document.

As I understand it, you sat down in 1983 and reconstructed this in the circumstances that you've just described. What I don't understand is where these particular numbers came from.

Mr. WATSON. I just told you. Those were my opinions.

Senator GORE. Pardon me?

Mr. WATSON. Those were my opinions.

Senator GORE. OK. Now, on what did you base your opinion that the goodwill from Judge Claiborne's 26 years in practice was worth $110,000?

Mr. WATSON. I couldn't answer that specifically We might say that's for each year he's been in business, we might have given him credit for so much money a year. The fact of the matter is I don't recollect spending a great deal of time of making a very thorough analysis.

Now, I have seen—I've had books and seen records that show what various law practices have been appraised at on people who died.

Senator GORE. You have?

Mr. WATSON. Or other businesses who died.

Senator GORE. You have some expertise in evaluating the goodwill of law practices?

Mr. WATSON. Nothing in particular. A law practice is a personal service business, isn't it?

Senator GORE. Did you ask Judge Claiborne his opinion of what the goodwill of his 26-year law practice was worth?

Mr. WATSON. I think the thing that we—the one thing I can recall specifically discussing with Judge Claiborne is early on in our interviews we made some reference to the fact that the rolodex on his desk would be worth several thousand dollars just to have the numbers. Because Las Vegas is a city of unlisted phone numbers.

Senator GORE. Mr. Watson, could you answer the question? Did you ask Judge Claiborne his opinion of what his goodwill from 26 years in law practice was worth?

Mr. WATSON. No, I did not.

Senator GORE. So you're asking us to believe that this number arose through spontaneous combustion in your mind?

Mr. WATSON. That's, generally speaking, how you get a value when you don't know a value and you need to come up with a value. [Laughter.]

Senator GORE. All right. Now, did the value of the client list also arrive through spontaneous combustion?

Mr. WATSON. You don't need to belabor all the points, Senator Gore. I'll just answer them all for you at the same time.

Senator GORE. Please let me be the judge of what should be belabored and what should be asked, and just, if you would, please, just answer the question.

Did you independently arrive at the value of the client list?

Mr. WATSON. I believe I did.

Senator GORE. With no input from Judge Claiborne, is that right?

Mr. WATSON. That's my best recollection.

Senator GORE. Are you going to give the same response for—now, well, you testified a moment ago that you did have a specific conversation with Judge Claiborne about one of the items on this list, and that was the value of his rolodex.

Mr. WATSON. Yeah, the rolodex, the phone numbers, access to people.

Senator GORE. And he allowed as how that might be worth roughly $5,000?

Mr. WATSON. I believe we roughly said several thousand dollars. More than one.

Senator GORE. More than one?

Mr. WATSON. Well, several would be more than one.

Senator GORE. And you came up with the figure of $5,000?

Mr. WATSON. You notice they're all round numbers.

Senator GORE. Now, Mr. Watson, of what relevance would the cost of Judge Claiborne's rolodex be if you were not going to use this particular method of valuing his law practice and putting the $88,500 in a context which would eventually show a loss? Do you understand the question?

Mr. WATSON. I don't believe I do.

Senator GORE. What relevance would there be to the value of his rolodex unless you were going to compute his tax returns in this manner? In other words, if you computed his tax return correctly and reflected the $88,500 in a correct fashion, it wouldn't matter at all what the cost of his rolodex was, would it?

Mr. WATSON. You're getting a little confused. This is a document——

Senator GORE. I understand.

Mr. WATSON [continuing]. Created in 1983 to satisfy the client about his 1980 tax return.

Senator GORE. I understand. But you just said that he told you his rolodex was worth several thousand dollars during your initial meeting with him.

Mr. WATSON. That's as I recall.

Senator GORE. Well, what occasioned your conversation about the cost of his rolodex?

Let me just tell you my speculation.

Mr. WATSON. Wait a minute. We don't have the rolodex on here. So let me see if you and I are thinking about the same thing.

Senator GORE. Cross-reference phone numbers.

Mr. WATSON. Cross-reference phone numbers. Yeah, OK. We're thinking about the same thing.

Senator GORE. All right. What would have occasioned your conversation with him about the value of his rolodex in his law practice?

Mr. WATSON. As I previously testified, early on in my meetings with Judge Claiborne, I suggested to him that by closing this law practice under the circumstances which he did, he may be able to take a loss.

Senator GORE. I see.

Mr. WATSON. OK. In the course of this very general discussion, this was a getting acquainted discussion, we were just talking about different aspects of his business and his life, very casually talking about valuing the business. And maybe it's because I looked at the rolodex on my own, it's a professional business, there's a large list of clients, there's large amounts of files, all of these things are very, very important in securing business. And maybe it was just the first thing that caught my eye in the course of this little discussion with him, the rolodex, because I consider that a valuable piece of property.

Senator Gore. Well, let me tell you why I——

Mr. Watson. Well, I'm curious.

Senator Gore. Yeah. Let me tell you why I ask this question and then phrase it a little bit differently.

It seems to me that if you were having your initial conversation with Judge Claiborne about the preparation of his taxes, and in that initial conversation you and the judge are discussing the value of his rolodex, that implies to me that Judge Claiborne is advised as of that moment that you have in mind, Mr. Watson, constructing a method of valuing the law practice that would allow the subtraction of the $88,500 in uncollected fees against other items in the law practice. As of that moment, the conversation seems to imply knowledge on the part of the judge that this is the direction you're headed in in preparing his tax returns.

Now, am I wrong in reaching that conclusion?

Mr. Watson. No. You're absolutely right because that's exactly what happened.

Early on in our discussions, I just told you I suggested to the judge or asked a question of him, I made a statement—at this time, I can't recall which the sum and substance was—what happened to the practice when he went on the bench? Did you close it down? Did partners take it over, whatever? And I asked him that specific question for the purpose of taking some sort of a loss on his tax return. At that particular time, I had no idea what any of the information consisted of.

So it is a general discussion. If you came into my office, I'd have the same discussion with you, who are you, what are you about, what have you got, what do you owe, what do you make, what do you own? It's a rather casual way of me getting out of you what I want to know so that I can make some kind of recommendations, or I can go tell the person that is going to do the work for me this is what that guy said.

Senator Gore. Did the judge venture any opinion—during that same conversation you talked about the rolodex, did he venture any opinion about the value of the cases pending and not yet closed?

Mr. Watson. Since that's a round number, I don't think he did. That's just a guess on my part.

Senator Gore. Was it your idea to include that particular category, cases pending and not yet closed?

Mr. Watson. Let me tell you, if you'd like some explanation of exact—if you want something to support——

Senator Gore. No. I'd like the answer to that question.

Mr. Watson. OK, the answer to that question is I just came up with that. And here's the way I came up with it.

We figured the law practice is worth about two times average earnings. And what I would say, without my calculator or without something here to figure it with, I bet if we analyzed $40,000, what it would come down to is about say, what would that be, 3 or 4 months income? Three or four months gross income?

Senator GORE. I don't know.

Mr. WATSON. Well, I don't either. But I'll bet that's what it would amount to is about 3 or 4 months of gross income. Because when you're still soliciting for the business, on the average your income would still be flowing in. If you stop soliciting for it, obviously it's going to tail off. The longer you've been out of business, the less your new values would be worth.

Senator GORE. All right. Just a couple of other brief questions. In arriving at this figure for good will, did you consult any books showing values for other law firms?

Mr. WATSON. No. As a matter of fact, good will is almost always stricken if you're using it for the purpose of borrowing money anyway. And if you're using it for the purpose of a sale, you usually include good will so you've got a negotiable point when they ask you to come down on your price.

Senator GORE. Was the judge present when you prepared this particular form?

Mr. WATSON. No, sir, he was not.

Senator GORE. All right. One other question.

You testified during your earlier appearance, when I asked you about the judge's feelings when you presented him with the completed form, and he looked at the payment of $1,100 but didn't express pleasure necessarily.

Do you remember that?

Mr. WATSON. I don't recall that we had any indepth discussion, and what's been testified to in my memory was vague as to how it was delivered.

Senator GORE. But it was your earlier testimony, if I recall it correctly, that he did look at the amount that he owed in taxes?

Mr. WATSON. As I recall, when I delivered the copy to Judge Claiborne's chambers, which has never really been my testimony, I told you I didn't remember which one it was, that on the tax return that I did deliver to his office, my recollection of the incidents were that we gave that tax return a rather casual looking at.

Senator GORE. Did he look at the amount that he owed? I mean, it would seem a reasonable thing for someone to get a tax return that's just been prepared and show some curiosity in the amount of money that has to be paid.

Mr. WATSON. You made a speculation, Senator Gore, but let me tell you what the real world's about. I have people——

Senator GORE. That's not the real world.

Mr. WATSON. No. What is—you're taking an isolated situation and trying to make it the rule for all of the hundred or more or 300 or 500 people who walk into my office and get their tax returns, I have clients that read every line on the tax return. So to speak, they read the ink off the page before they give you the money and before they take that return. I have some that have taken the return after that kind of an examination that are, a week later, calling me back, going line by line over that return.

Senator GORE. Mr. Watson, how many clients——

Mr. WATSON. Judge Claiborne is on the opposite end of that spectrum, and the type of that clientele ranges from one to a hundred.

Senator GORE. Mr. Watson, how many clients do you have who do not look at the amount of money that they owe in taxes?

Mr. WATSON. I would say 20 percent of the people who have their tax returns done in my office. And you're asking me for a really speculative answer. I can tell you that more than one person has picked up tax returns in my office and said where do I sign? Hand it back to the girl and say mail that for me.

Senator GORE. I don't have any further questions, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

The VICE CHAIRMAN. Mr. Watson, there's been some conflict in your testimony I think in the successive proceedings, and I want to get this clear.

When Judge Claiborne came to your office to sign his 1980 return, were you there?

Mr. WATSON. No, sir, I wasn't.

The VICE CHAIRMAN. Did you testify at one point that you were, that he signed in your presence?

Mr. WATSON. Yes, I did. What I really testified to, if you go back and look at it, was I didn't recollect. I thought that was what happened.

The VICE CHAIRMAN. Well, I'm not trying to catch you out in some inconsistency in your testimony. I'm just trying to get at what your best recollection now is on what occurred.

Mr. WATSON. My best recollection now is just exactly what happened. He came into the office, picked up the tax return, and what I had delivered to him was a copy of the tax return.

The VICE CHAIRMAN. Now, when did you do that?

Mr. WATSON. I couldn't recall, Senator. It was——

The VICE CHAIRMAN. A few days after that?

Mr. WATSON. It seems to me that it was not a long time after it.

The VICE CHAIRMAN. And where did you do that?

Mr. WATSON. I delivered that copy to his chambers.

The VICE CHAIRMAN. To his chambers.

Now, at that time, was your partner with you?

Mr. WATSON. Yes, he was.

The VICE CHAIRMAN. And from your testimony, as I understand it, the Judge looked over the return or you all went through it, although perhaps not in great detail. Is that correct?

Mr. WATSON. OK. When I make a statement like that, it's hard to give you a good clean answer on it. Because when you look at a tax return or you peruse this, you may be noticing the pages, and you may be looking at the figures. And to be honest with you, I think this is some conjecture or speculation on my part whether we even reviewed it, because I really don't remember. I'm just telling you that's what normally would have happened. We would have probably and——

The VICE CHAIRMAN. Now, when did you and Judge Claiborne again review the 1980 return subsequent, subsequent to this meeting in his chambers according to you a few days after the original was sent in?

Mr. WATSON. OK. That's when I went down and that was the first time—now you're asking me when did we talk about this return after that?

The VICE CHAIRMAN. After that?

Mr. WATSON. I can't recall. I know there were some other calls and other questions, but I can't recall specifically when I talked to him.

The VICE CHAIRMAN. After Judge Claiborne got his refund check, is it correct that he got in touch with you about this refund?

Mr. WATSON. He testified to that, and I didn't recall that that happened. It's just not my recollection. Now my mind is this way. I testified that I didn't recollect when I was questioned about that refund check. I heard Judge Claiborne testify. This triggers my mind. My recollection of the event now is that it's entirely possible when I testified to you earlier I didn't recall that it happened. And I believe that's what I testified to.

The VICE CHAIRMAN. Was his income tax return reviewed by the two of you after the refund check?

Mr. WATSON. You see, I can't recall that either. But I'm sure it was.

The VICE CHAIRMAN. Now, on this exhibit 5 that's been marked by the committee, you said this was a recreated document. But there was no such document earlier, was there?

Mr. WATSON. There was no such document until after the Reno grand jury.

The VICE CHAIRMAN. I see. So this was not a document after the refund check in order to explain the size of the refund, is that correct?

Mr. WATSON. Well, I'm not going to swear, but I don't recollect it that way.

The VICE CHAIRMAN. So this was done after the Reno grand jury, is that correct?

Mr. WATSON. That's my recollection of the event.

The VICE CHAIRMAN. And was that the instance in which Judge Claiborne said that you had gotten him indicted?

Mr. WATSON. No. No, let me see here. The Portland—didn't I testify what my recollection was is somewhere between the Portland grand jury and the Reno grand jury is the time the question was raised by Judge Claiborne as to the credibility of that transaction. And I can't think of any reason why he would have raised the question until he was being probed by the IRS and the FBI. As far as I know, he was satisfied with the return, and I can't recall any discussions of any in-depth nature.

The VICE CHAIRMAN. Did the judge ask you to prepare a document that would show how you made the calculations?

Mr. WATSON. Yes, Judge Claiborne made that request of me.

The VICE CHAIRMAN. So this document was made in response to a request from Judge Claiborne, is that correct?

Mr. WATSON. That's correct.

The VICE CHAIRMAN. And how did you, for instance, arrive at a figure for uncollected accounts receivable of $188,500 for the judge's practice?

Mr. WATSON. I think that's $88,000.

The VICE CHAIRMAN. All right, $88,500.

Mr. WATSON. Because by this time I had had an opportunity to be before the grand juries, and the rediscovery of the $88,500 was known to me at the time this was filled out.

The Vice Chairman. Now, is that the figure that you say was revealed in committee exhibit 6, this worksheet? You stated there that this is a summary of the fees, is that correct?

Mr. Watson. That's right.

The Vice Chairman. Where is it? Where do you find the summary of the fees?

Mr. Watson. Well, I just happen to know what some of these things are, and I believe the name over here identifies that he collected some money from somebody.

The Vice Chairman. In whose handwriting is this exhibit 6?

Mr. Watson. Judge Claiborne's.

The Vice Chairman. How do you know that?

Mr. Watson. Well, I'm reasonably—I'm not a handwriting expert, but I'm reasonably sure this is his. And let me back this up. It is my belief that this document was written by Judge Claiborne, and it's my belief that it was part of his file. More than that, I can't speak. It appears to me to be that this is a sheet that he made up at sometime or another, which wound up in my possession, which totals up to the $88,500 that has already been testified to that he reported on this yellow sheet.

The Vice Chairman. Well, where does it total up to $88,500?

Mr. Watson. It doesn't. It totals up $88,286.83. And there again my speculation is that Judge Claiborne came to that kind of a number, he would have probably rounded it to $88,500. And when I prepared this document, I was already well aware of this $88,000 that's on this document because that information, my memory had been refreshed.

The Vice Chairman. Did you have any role in preparing the application for an automatic extension of time for Judge Claiborne's 1980 return?

Mr. Watson. I don't—I previously testified to that but I don't recall. It was either prepared by our office or he prepared it. Judge Claiborne testified he brought it into the office and someone typed it up for him. And it obviously got out of my office without being signed, but I don't believe they're required to be signed by me if the taxpayer signs it.

I also don't type on the kind of typewriters that I have in my office because I don't even know how to turn the one at the front on. But one or the other of us did that.

The Vice Chairman. Didn't you testify earlier that you did your work in pencil in your office?

Mr. Watson. Yes, I testified a majority of our work is done in pencil.

The Vice Chairman. Were you aware of the figures that were on the extension of time request?

Mr. Watson. No. I couldn't say that I had any knowledge of it. We should have had. Whoever was doing that tax return should have been aware of that, and they weren't. And I previously testified that that document was either lost or never given to me. Either Judge Claiborne sent it in or my office sent it in. I don't know which.

The Vice Chairman. Who signed it?

Mr. Watson. I believe Judge Claiborne did. I'd have to look at it.

The VICE CHAIRMAN. And it went with a check from Judge Claiborne to the Internal Revenue Service?

Mr. WATSON. That's what has been testified to.

The CHAIRMAN. Senator DeConcini.

Senator DECONCINI. Thank you, Mr. Chairman.

I hate to belabor this, but I am really troubled, Mr. Watson, No. 1, going back to Senator Gore's question on the value of this partnership.

You said that you have seen these types of valuation of law firms and estates, and what have you. Have you taken courses or read any books or had any type of training in valuating any businesses?

Mr. WATSON. Well, as a matter of fact, I have had a little.

Senator DECONCINI. You have. What—can you tell us a couple of courses or couple of background materials that you've had in this area?

Mr. WATSON. As I testified earlier, I do hold one little professional designation. That is, I'm a graduate of the American College of Life Underwriters. That designation deals in the area of estate planning, taxation, pension plans, and for a period of about 6 or 7 years, I couldn't recall which, I held a position for the Metropolitan Life Insurance Co. called an advanced underwriting adviser.

Senator DECONCINI. And what does that entail?

Mr. WATSON. The nature of my work there was to be trained and then go into the field and deal with the agents in the 11 Western States in which I was assigned. And what we did was we instructed these people in how to set up tax-sheltered annuities for school teachers and other public employees, pension plans, Keogh plans, IRA, and we went in and talked to you about estate planning from the standpoint of how much of your estate would be taxed when you died.

Senator DECONCINI. OK. What company was this?

Mr. WATSON. The Metropolitan Life Insurance Co.

Senator DECONCINI. I'm glad to know that.

Mr. Watson, in that training and teaching that you were involved in, in the Western States, did it include the valuation and planning and advice of coming to conclusions as to values on businesses?

Mr. WATSON. Yes. Primarily what that advanced training was dealing with was evaluation of businesses.

This estate tax, what are they going to tax, what the Government says your property is worth when you die.

Senator DECONCINI. OK, Mr. Watson. Now, in that, were there any examples that you can recall about law firms, businesses being sold? Did you ever advise anybody on such a thing?

Mr. WATSON. Yes; we went into this field——

Senator DECONCINI. In the course of your teaching other agents for Metropolitan Life, you advised them on the sale of law firms, how to come to those values?

Mr. WATSON. No. I think law firms stick in my mind because there was always the horrible example of the law firm where the fellow died without having set an evaluation. And he was taxed an enormous amount of money.

Senator DECONCINI. Did Metropolitan Life in its course of hiring you and having you become proficient, if I can use that term, to teach other agents, teach you or give you any instructions on the valuation of law firms?

Mr. WATSON. Businesses and, yes, as a matter of fact——

Senator DECONCINI. Law firms?

Mr. WATSON [continuing]. From the time—well, law firms are businesses.

Senator DECONCINI. Well, OK. Now, I want to know on law firms. I understand they're businesses.

Mr. WATSON. Let me preface that by—I can't recall that we had a specific valuation on attorneys, but I don't have any reason to believe there wasn't.

We had a lot on personal service businesses.

Senator DECONCINI. Well, I don't claim to be any tax expert, I can assure you, but I'm advised by tax counsel that goodwill can't be deducted if it had no basis in the tax area. You probably can't deduct, I don't think, any of these things.

Mr. WATSON. Well, Senator, these aren't deductions.

Senator DECONCINI. What are they? What are you going to do with these? These are to create a value so you have a loss; isn't that right?

Mr. WATSON. Wait a minute. You have dwelt on only the top of this, how the valuation of the business was determined, what we thought was appropriate. This was just one of the factors.

Senator DECONCINI. Yes. So you add all these things up here under the value list, and they are not going to be accumulated for the purpose of reducing the taxpayer's business by a loss that is supposedly realized. Is that what you're telling me?

Mr. WATSON. No. What I'm telling you is that you're taking one portion of this form and you're attempting to form a conclusion on it, and just give me the benefit of the doubt for a moment, if it isn't just terrible, and let's take it all.

The first thing I got up here is that the physical assets of the business have been given a value.

The second thing is, we took how much money that business earned.

Senator DECONCINI. OK.

Mr. WATSON. Well, most professional practices are sold on how much money they earn.

Senator DECONCINI. OK.

Mr. WATSON. But it is a reasonable check and balance. If you took his income for 1978, 1979—let's see, no—1973, 4, 5, 6, 7 and 8, and you add those up and you average those figures, I believe it comes out to producing a figure of $1 million for 6 years, and that income from the business, average net income, is $166,000, if it was worth two times its net income, that would be $333,554. Purely speculation.

Senator DECONCINI. You were taught that speculation by Metropolitan Life? You were taught that speculation, that process?

Mr. WATSON. That is the way most properties are sold how much money they earn.

Senator DECONCINI. OK. And these valuations now, from what I understand, cross-reference phone numbers, you made an estimate.

Mr. WATSON. We made an estimate on all of that.

Senator DECONCINI. So all of these figures here with perhaps the exception of uncollected accountable receivables you made an estimation?

Mr. WATSON. That is correct.

Senator DECONCINI. Now, getting that estimation, that came out of the blue; is that fair to say?

Mr. WATSON. Well, you might say that.

Senator DECONCINI. OK.

Mr. WATSON. I had some information relative to how much the business earned, and the end result of the figures were they were reasonably close together.

Senator DECONCINI. Mr. Watson, you continued to do Judge Claiborne's 1980 and 1981 and 1982 tax returns, is that correct?

Mr. WATSON. Yes, I believe that is correct. 1980, 1981, and 1982.

Senator DECONCINI. 1981 and 1982 you did?

Mr. WATSON. Uh-huh.

Senator DECONCINI. My last question, Mr. Watson, is—I may have missed this because I was not here at the very beginning of your testimony, but, Mr. Watson, I have to say in preparation for this question, you are the most irreprehensible witness I have ever seen come before the Senate in my short years here.

And can you explain to me, in short answer, how in the world you could come up with this document all of a sudden and expect this committee to believe, when you testified last week quite opposite, to my recollection at least, as to having any document? Why did you not offer these last week when we asked you for such documents?

Mr. WATSON. I will explain that to you, Senator. As a matter of fact, I do not recall that you asked me, and if you did ask me, I would have presumed they were documents relating to the charge, the 1980 tax return.

Senator DECONCINI. You do not remember counsel asking you about having any work product?

Mr. WATSON. Oh, yes, I remember.

Senator DECONCINI. That you had given it all back to the clients.

Mr. WATSON. That is what I told him. That is what I thought.

Senator DECONCINI. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Warner has just one short question, and then Senator Heflin.

Senator WARNER. Going back to the House managers' exhibit if you will look at the Schedule D of the 1980 return, that is on exhibit 27. Can this be provided the witness if he does not have it? Schedule D. Correct.

The CHAIRMAN. Are you on the 1980 return?

Senator WARNER. The 1980 return, Schedule D.

The CHAIRMAN. Does Mr. Watson have the 1980 return?

Mr. WATSON. Yes, sir.

Senator WARNER. I recall vividly questions from a number on this panel of Senators directed to the columns down there in the middle, assets held more than 1 year, of $150,000, $250,000, $100,000; and repeatedly you said those figures came from Ms. Travaglia. I don't know how she put them together but they came from her. Do you remember that?

Mr. WATSON. Yes, sir, you're stating it approximately correct.

Senator Warner. Well, correct me, then, if I'm inaccurate.

Mr. Watson. I believe what I testified to is that the figure of $250,000 was the joint result of discussions with Ms. Travaglia. As I recollect that particular meeting, she suggested the $250,000 as would that be appropriate, and I cannot right now recall exactly what she said. I agreed with that figure because it was my opinion the business was worth more money.

Senator Warner. Well, my notes show that over and over again we asked you how these figures were arrived at. You said I relied on her, and she composed those tables.

Mr. Watson. At that time, you asked me about the time of the preparation of the return, and I testified to you truthfully about that. This document was prepared——

Senator Warner. I understand that. I will come to that document. But at the time the return was prepared, this was her work product, that was your testimony.

Mr. Watson. That is what I testified to, and that is what I recollected.

Senator Warner. Now, subsequently she left your employ.

Mr. Watson. That is right.

Senator Watson. Then how did you come back here in 1983 and suddenly be able to reconstruct all of this and provide the committee now today with exhibit No. 5 which has those identical figures in it? Here is the $500,000. Here is the $250,000 and the $100,000.

Mr. Watson. It is not very difficult at all if you would let me—you are asking me. Do I understand you——

Senator Warner. When we originally questioned you about Schedule D of the 1980 return, it was Ms. Travaglia's work product.

Mr. Watson. I have testified to that.

Senator Warner. Now, she left your employ?

Mr. Watson. Right. 1983.

Senator Warner. Now, how can you reconstruct in detail how these calculations were made?

Mr. Watson. No, no, I am not saying that at all. I am not saying that at all. I told you that we had not had a complete in-depth analysis evaluating Judge Claiborne's law practice. Ms. Travaglia through the discussions with she and I on, ever how brief they were, agreed that $250,000 is on that form. Now, here is the way you know that was an agreement. It is in her handwriting. Ms. Travaglia wrote that down.

All I am telling you is that 2 or 3 years later Judge Claiborne is questioning me about how would you come up with that number.

Senator Warner. Correct.

Mr. Watson. OK. What I prepared for Judge Claiborne 2 or 3 years later is how I would have come up with that number if in fact, I was going to use any calculations, that it was my opinion that the $250,000 was a conservative number at the time.

Senator Warner. This is the figure that was represented to the Internal Revenue Service and indeed the people of the United States about this tax return.

Mr. Watson. That has been referred to as a swag.

Senator Warner. Well, I do not know what you call it, but you filed the return, your office.

Mr. Watson. We filed the return and we believed——

Senator **Warner**. Did you work in the composition of that figure prior to its being inserted in this return?

Mr. **Watson**. Did I do what?

Senator **Warner**. Did you work with Ms. Travaglia to reach that figure?

Mr. **Watson**. We just discussed it. As far as you mean sitting down like I did this.

Senator **Warner**. No. I understand this document.

Mr. **Watson**. OK.

Senator **Warner**. I'm not going back to that. That is your work product.

Mr. **Watson**. Yes, sir.

Senator **Warner**. I am trying to figure out when the return was filed before she was fired or however she left, who figured out $150,000, $250,000, $100,000?

Mr. **Watson**. My recollection of that event was Ms. Travaglia.

Senator **Warner**. All right. Then she is gone now, and yet you come back and explain to the judge how those figures were arrived at.

Mr. **Watson**. I believe you got the picture.

Senator **Warner**. Well, where did you suddenly understand how she came up with these figures? She's gone.

Mr. **Watson**. I did not make the representation that this is how she came up with the figures. I made a representation to Judge Claiborne this is how you would support that figure.

Senator **Warner**. Well, how can you say you are going to support—it seems to me when you file a return, you should stick within the method by which you reached these figures and the documentation.

Mr. **Watson**. As I previously testified, it was my opinion the business was worth more. You see, all during this time I had had access to these old tax returns. I knew that this guy had made about $166,000 gross profit out of the business before tax, and I knew he had done that for 7 or 8, 10 years. Just knowing that.

Senator **Warner**. I understand that.

Mr. **Watson**. Well, you are not giving me an opportunity.

Senator **Warner**. You go ahead.

Mr. **Watson**. Just knowing that would cause me to make some determination in my mind about what that business is worth. Now, I realize that you are very suspect of my competence, but in the course of a couple of years, I have sold a few businesses in Las Vegas of all types.

And in almost each one of those negotiated sales, we dealt with figures of how much money did it earn and that is part of the value.

Senator **Warner**. My time is up. One last question. The 1981 return, you followed much the same scheme as I look through it, is that correct?

Mr. **Watson**. The 1981 return, to the best of my knowledge and belief was prepared in the same manner as the prior returns by another employee.

Senator **Warner**. Right. And it appears that you wrote off about $40,000 worth of his income and sheltered it this time using the same basic scheme.

Could the witness be provided with the 1981 return? It is now before the members of the committee and presumably all counsel.

Mr. **Watson**. Yes, sir, it appears to be the same procedure was used on 1981 as 1980.

Senator **Warner**. In the preparation of the 1981 return, did you discuss it with Judge Claiborne?

Mr. **Watson**. No more so than I had discussed the previous return with him.

Senator **Warner**. Did there come a time you amended the 1981 return?

Mr. **Watson**. We amended a tax return. I could not——

Senator **Warner**. How was it amended and for what reason was it amended?

Mr. **Watson**. I do not recall. I am not even sure which one was amended. It is like I have tried to explain to you. I do not do that work in this office. I am not involved in the preparation of tax returns in this office. I just own that company. I do not do the work.

Senator **Warner**. All right. Last question. Do you feel that you or your firm has any obligation whatsoever to the people of the United States to prepare accurate returns and file them?

Mr. **Watson**. I answered that question for you yesterday.

Senator **Warner**. What is the answer?

Mr. **Watson**. I feel that we do.

Senator **Warner**. And is that the reason you delegated the final authority to some woman now deceased who has no experience whatsoever in the preparation of returns?

Mr. **Watson**. I did not delegate that authority.

Senator **Warner**. You said——

Mr. **Watson**. Wait a minute. You are not allowing me—well, let me put it to you this way. What happened was Judge Claiborne came into the office, by his testimony—I have no reason to refute that, and based on what I really did, I believe he did it.

He came into the office and he picked up his tax return. Now, what you never did allow me to finish was the procedure by how a tax return comes into my office and gets out, did you?

Senator **Warner**. I listened very carefully, and some woman who is now deceased was given the final authority to pass on the returns and have them signed and mailed to the U.S. Government.

Mr. **Watson**. Do you want the explanation or not?

The **Chairman**. I think we are going around in circles.

Mr. **Watson**. Well, let me explain it to you just very briefly.

The **Chairman**. Very briefly.

Mr. **Watson**. You come in. We get the information. That is usually done by me. It goes back into the room that we call the accounting area, and someone who is an accountant does the tax work.

When the accountant gets through with that work, they take what they are going to give to the client, put it under a clip or wrap it up in a rubber band. They take their finished product. They put it up on the front desk for copying and either to be delivered or to be picked up.

Apparently what happened is Judge Claiborne came in and Adelle Farrell handed him that tax return and it may not have been complete. I have every reason to believe that it was not. A discovery that was not made by me.

Senator WARNER. My time has expired, Mr. Chairman.

The CHAIRMAN. Senator Heflin.

Senator HEFLIN. Mr. Watson, this exhibit 6 that you say is in Judge Claiborne's handwriting what do you understand it to be?

Mr. WATSON. Well, it appears to me to be money that was earned or money that was deposited because it says Pioneer Bank, and it lists various dates and it lists various amounts. What it looks to me like is a recap of deposits that he made in Pioneer Citizens Bank.

Senator HEFLIN. Then under that where it says, FNB, meaning First National Bank?

Mr. WATSON. Yes. Pioneer Citizens then down at FNB, that is what I would think.

Senator HEFLIN. There appears to be on pages 1 and 2 of this a number of entries probably in the neighborhood of around 20. Yet on the third page where the $88,286.83 is calculated, it seems to be an addition of four items.

How did you derive and from what source would you have derived to have gotten the four items that constitute the $88,286.83?

Mr. WATSON. I did not. I merely speculated on that. I remember this form. It appears to be part of Judge Claiborne's records that were lost in my office. Judge Claiborne can probably tell you exactly what all this is if, in fact, he recognizes this document to be in his handwriting, and you just asked my opinion whether it is in his handwriting. At this point in time, I am only giving you an opinion of what I think.

Senator HEFLIN. Well, you found it in your file.

Mr. WATSON. I found it in the file.

Senator HEFLIN. It is in his handwriting. But you do not really know what it means and what his purpose was, isn't that what you said?

Mr. WATSON. No. I just speculated on that for you.

Senator HEFLIN. So on the exhibit 5, up at the top of the page, analysis of value, Claiborne's law practice. That appears to be in separate handwriting from the rest of the page.

Mr. WATSON. That is correct.

Senator HEFLIN. Do you know whose handwriting that is?

Mr. WATSON. That is mine.

Senator HEFLIN. That is yours. Who is the handwriting that appears after that?

Mr. WATSON. That is also mine.

Senator HEFLIN. That is yours but it is printed?

Mr. WATSON. Well, that is writing and printing. Based on my recollection of this document, everything is written on it except the committee exhibit No. 5 was written by me.

Senator HEFLIN. All right, sir. Now, I do not know whether this one has been marked as an exhibit, but it is a typewritten page which appears, when it was shown to Judge Claiborne and he said it was not the document that you had prepared for him.

Mr. WATSON. Could I see it?

Senator HEFLIN. He was saying something was missing from it or to that word. Is that identified as a—if it is, show it to the witness.

This is one that Mr. Goodman gave me. Do you have that? Is that the same? 26. All right.

As I look at it, pages 1 and 2 of exhibit 5 are on this, but the third page writing is not on this. Is that correct?

Mr. WATSON. You said on the back of this sheet is not on this?

Senator HEFLIN. Well, I have Xerox copies, and I do not know exactly how you have it there. But there is basically photocopied three pages. It may come from front and back of one page and another page.

I am trying to get the distinction between this exhibit 26 and this exhibit now that you helped produce exhibit 5. Judge Claiborne says that 26 was not what you gave him. I am trying, in a shorthand manner, I am trying to see if that is the distinction.

Mr. WATSON. Well, just as briefly as I have looked over this, it looks like this was prepared based on the information on this sheet of paper.

Senator HEFLIN. Except for the language which says capital loss carried forward 1981, $97,000 and reduced by the $40,000, accounts receivable $40,000, and so forth. It appears there. Is that the distinction between the two documents?

Mr. WATSON. Yes, sir, it is.

Senator HEFLIN. In sort of a thumbnail sketch, this matter of what you have done on exhibit 5 is basically to figure three different ways of evaluing the business and then you got two times the ratio and then based on arm's length offer and value based on three factors divided or plus the value by stipulated items, and that is those different things to come up with each of those amounts in excess of the $250,000 that was value placed on it on the return, is that what your purpose is?

Mr. WATSON. That is correct.

Senator HEFLIN. Now, let me ask you this. At the time that Mrs. Farrell was in your office, what was the dates that she was there; who is Mr. Yablonsky's sister?

Mr. WATSON. No. Mrs. Farrell's daughter was a secretary in Mr. Yablonsky's office. She was an employee. Her daughter, to my recollection, was an employee of the FBI.

Senator HEFLIN. Oh, it was an employee of the FBI, and Mrs. Farrell's daughter was?

Mr. WATSON. That is correct.

Senator HEFLIN. Did you ever notify Judge Claiborne of this fact?

Mr. WATSON. I may have. I really could not recall.

Senator HEFLIN. Well, it has been brought out that there were newspaper articles starting in 1980 in various newspapers in Las Vegas at which there was revelation that Judge Claiborne was the target of the strike force and an investigation.

And it is my understanding, at least the newspaper recites, that thereafter Judge Claiborne came out with rather some harsh language about the strike force. I understand that all three of the Las Vegas newpapers quoted the judge as saying, and this, I assume, is around April 1980——

Mr. WATSON. Yes, sir.

Senator HEFLIN. All three of the Las Vegas newspapers quoted the judge as saying the strike force should be thrown out of

Nevada. He called the strike force prosecutors a bunch of crooks and rotten bastards who think everybody in Nevada is a crook.

Claiborne continued his attack, "Jeffrey Anderson has no respect for decency, no respect for people's civil liberties. Those bastards are out to destroy Nevada and I am not going to let them do it. I am not going to let them ride roughshod over this community."

Did you see in the newspapers as of that time any such report of the language of Judge Claiborne toward the strike force?

Mr. **Watson**. Yes, sir, I am a regular reader of the Las Vegas Sentinel.

Senator **Heflin**. All right. Now I assume in April 1980, this was before you started representing Judge Claiborne relative to filling out his income tax return?

Mr. **Watson**. You say it is in April? What day in April?

Senator **Heflin**. That is what my, the report that I have is that it was in April, and I think the testimony is that as of April there was newspaper testimony that Judge Claiborne was a target of the strike force. This was in April 1980.

Mr. **Watson**. What day in April?

Senator **Heflin**. Well, I don't know what day. I mean, I am just saying in April. That is before—you were not—in other words, in April 1980 was when Mr. Arnold was filling out the 1979 return.

Mr. **Watson**. Oh, OK.

Senator **Heflin**. Is that right?

Mr. **Watson**. Yes, about April 1980 he would have been doing the 1979 return.

Senator **Heflin**. But you at that time did fill out the return of Mrs. Claiborne?

Mr. **Watson**. I believe that is correct.

Senator **Heflin**. All right, sir Now when Judge Claiborne came to your office and you started talking to him about the business, was Mrs. Farrell at that time working with you?

Mr. **Watson**. I can't testify to that because I don't know. I don't remember the exact dates and times of the receptionists goings and comings.

Senator **Heflin**. Well, you have no idea as to whether she was working with you and how long she worked with you?

Mr. **Watson**. To tell you the truth, I couldn't remember her name when I came in here Thursday; I asked somebody.

And I don't know, it is my recollection that Mrs. Farrell was working in the office at the same time Ms. Travaglia was. Ms. Travaglia may be able to testify with more certainty.

I don't have my records. To the best of my recollection, Mrs. Farrell was working in the office at the time Judge Claiborne would have picked up his tax return at about whenever it was in 1981, June.

Senator **Heflin**. Well, did Judge Claiborne in his conversations with you make any reference to the fact that he had problems with Government agents, and what did he tell you relative to trouble that he might have with the IRS? Was any statement made about that?

Mr. **Watson**. I don't recall any discussion.

Senator **Heflin**. I believe Judge Claiborne said that he had told you that he didn't want any trouble with the IRS because he already had all the trouble he could handle with the FBI, and you said that you knew that.

Mr. **Watson**. That is possible.

Senator **Heflin**. All right. So with this background going on at that time, did it not, all of this with Judge Claiborne, this in the newspapers, the fact that you had Mrs. Farrell sometime in your office in the neighborhood of this time, impress you that you ought to be extremely cautious about how you were dealing with Judge Claiborne's return and that it ought to be absolutely correct?

Mr. **Watson**. Senator Heflin, I relied on an employee to do my tax work then, and I do now. And every tax return that I do I am assuming they are doing it complete and correct. I don't handle tax protesters. I handle very few tip earners. I am not interested in that kind of business. And I would have presumed the person I hired knew what she was doing. That is what was represented to me. That is what is represented now. And any one of a dozen people can come in here and tell you that is the way I run it.

Senator **Heflin**. Well, did you make any statement to Ms. Travaglia or anybody else in your office about Judge Claiborne and his problems, and to the effect that you had Mrs. Farrell in the office?

Mr. **Watson**. No, sir. I don't think that we considered Mrs. Farrell a threat. As far as making a representation to one of my tax preparers, that I want you to be particularly careful in the preparation of this return, I am under the presumption they are particularly careful with the preparation of all of them.

Senator **Heflin**. Well, as you look back on it now, wouldn't that have been a flag of caution to you, what you read in the newspaper and what you have seen that he was stating about the FBI and the fact that there was an ongoing feud?

Mr. **Watson**. I agreed with him, and I thought he was going to get rid of that fellow.

Senator **Heflin**. Now, you thought he was going to get rid of that fellow.

Mr. **Watson**. Yes. Mr. Yablonsky.

Senator **Heflin**. Well, was there some conversation about trying to get rid of him?

Mr. **Watson**. I don't recall any conversation. It is just what I read in the paper and my personal observations of Mr. Yablonsky.

Senator **Heflin**. Your personal observations? Did you know Mr. Yablonsky?

Mr. **Watson**. Not personally.

Senator **Heflin**. But you, what, saw him on television?

Mr. **Watson**. I have seen him on television. I have read about him in the paper. I believe the time I may have met him personally was about the time he came to Nevada. He addressed the Las Vegas Strip Kiwanis Club, which I was a member.

Senator **Heflin**. And you heard him speak at that time?

Mr. **Watson**. I heard him speak, and I formed my opinion right there.

Senator **Heflin**. All right, sir. Now, if you will, turn to exhibit 10 of the Claiborne exhibits, which, as I understand, was in Judge Claiborne's handwriting except on the first page. The first page where it has there on exhibit 5 the handwriting that Ms. Travaglia has testified about.

What I see is his business transaction; his fair market value was not considered on book sale. And he had a gain from the sale because book value was used as basis. If he had knowledge of their fair market value, we can go for it on 1980 return to apply that to No. 2 income.

Now did Ms. Travaglia return this to you with that handwriting on it? Who was the message that she was writing this on directed to?

Mr. **Watson**. She wrote that to me.

Senator **Heflin**. All right. If it was returned to you, did you examine it when it came back?

Mr. **Watson**. Yes, I have looked at it.

Senator **Heflin**. Well, was the asterisk mark that appears there on the No. 5, that "No. 2 income,*" and then up at No. 2 there is an asterisk mark by the $88,500 figure.

Were those asterisk marks on it at that time?

Mr. **Watson**. Yes. Yes, when Ms. Travaglia gave me this note back, that is what she was referring to, and she commonly did make little asterisks like that.

Senator **Heflin**. Well, was there a figure written in there by the asterisk mark referring to No. 2? At the time was there a figure there, or was there, as has been some indication, that there might not be a figure that appeared there at that time?

Mr. **Watson**. My recollection is it was there.

Senator **Heflin**. It was there.

All right. Now, if you would, do you have a copy of the telegram that you sent to the grand jury after you had your conversation?

Mr. **Watson**. Do I have one?

Senator **Heflin**. Do you have a copy, or is it available? I think it ought to be made an exhibit.

Mr. **Watson**. I don't have one, no.

Mr. **Goodman**. May I approach the clerk, please?

Senator **Heflin**. Yes.

Well, let me read it I will read this.

This mailgram is a confirmation of the following message, and then it has things. "After reviewing memos not in my possession prior to my testimony before the grand jury, June 8, 1983, Reno, NV, I find that Harry Claiborne did report to my firm $88,500 collection of accounts receivable in 1980. This was uncollected accounts receivable from his law practice at the time the practice was closed. The $88,500 is reflected on schedule D of 1980, 1040, part II, line 8, column B, in the figure of $150,000. I would like this fact known to the grand jury as part of my testimony. Jerry D. Watson," and your address.

If you would, show this to——

Mr. **Watson**. You don't need to, Senator, I am familiar with that telegram.

Senator **Heflin**. You are familiar. Well, is that a correct statement of that telegram?

Mr. **Watson**. Yes, that is an exact statement.

Senator **Heflin**. All right, sir. Now, at the time that you talked to Judge Claiborne and he asked you to be sure to do something to let the grand—to correct what you had stated, did you go over with him at that time the matter of schedule D and whether or not the $88,500 was included in the figure of $150,000?

Mr. WATSON. I don't know that we went over it to any degree because at that particular moment things were very tense. But when he asked me, where would that show up on my return, and I said, it just showed up; where I went ahead and explained in the telegram it showed up.

In other words, I gave Judge Claiborne basically the same explanation that was in the telegram that I sent to the grand jury.

Senator HEFLIN. All right, sir. Maybe I will try to hurry as fast as I can.

If you would, turn to exhibit 31 of the House exhibit 31.

Mr. WATSON. I don't believe I have exhibit 31.

Senator HEFLIN. Would you give him 31?

Well, anyway, I will try to do it to save time. This is your letter of April 6, 1981, to Judge Claiborne, in which you talk about the home sale and some property sale, and then there is a paragraph:

"The possibility of taking a loss on your business looks good. We will assemble supporting information with your help to determine the amount of this loss."

Now did you then assemble information to determine the amount of the loss?

Mr. WATSON. Yes. As I have previously testified, this letter was sent out after he came in on, as I recall, the first meeting. He must have given me some in—we had some discussion about the business. As I recall, I initiated that conversation, that there might have been a loss.

In the meantime, I would obviously discuss the possibility of a loss with whoever is doing the accounting or the bookkeeping for me at the time. But I don't consider it particularly significant because I thought, independent of anyone else, that there was a possibility he had a loss on the business. I merely reaffirmed that with this letter.

If you will look at this, this letter is sort of soliciting.

Senator HEFLIN. All right, sir. Did he give you any help?

Mr. WATSON. Not to a large degree. We discussed, like I told you, the various offers. There may be some precise numbers. I had the $88,000.

I can't recall all of the discussions that we had about the valuation of the practice. I can't recall all the details of that.

Senator HEFLIN. The method of handling this on schedule D as a capital loss does not involve a sale. And I believe that you have either testified or somewhere where you characterized this as an abandonment.

Mr. WATSON. I don't believe I used the words "abandonment."

Senator HEFLIN. Well, there is some evidence——

Mr. WATSON. Well, maybe I——

Senator HEFLIN. I heard the word "abandonment" here used, and you also in this exhibit, one of these exhibits, I believe it is 5, up there on the equipment, books, leasehold, abandoned gave away cost. You have the use of that word there.

Mr. WATSON. Well, abandoned. I may have said it, but I can't recall it.

Senator HEFLIN. Well, whatever you want to call it, loss——

Mr. **Watson**. Walked off from it, closed it down, might have been more like what I said.

Senator **Heflin**. The concept of a nonsale to take advantage of a capital loss, raises first a real tax issue.

Mr. **Watson**. Senator, let me explain that to you. Ms. Travaglia is the woman that I hired to fill out forms. The form is filled out in Ms. Travaglia's handwriting.

Senator **Heflin**. Well, this CLU work and this work with Metropolitan in school, and these types of valuation of a business that you, yourself, have testified to in answer to Senator DeConcini, that concept, did it come from your experience there, or did it come from what Ms. Travaglia said?

Mr. **Watson**. It came from what Ms. Travaglia said.

Senator **Heflin**. Now you had talked about the evaluation, that you were experienced with the evaluation of buildings. I mean, of businesses.

Mr. **Watson**. Yes. My experience with that is that I know if you walk off from something you have got the possibility of a loss. If your car runs over a cliff and it is not insured, you have got a possibility of a loss. I know that much about it. Beyond that, I rely on professionals to complete the work for me.

Senator **Heflin**. All right, sir. Well, in whatever concept came up you used an estimate of $250,000 as to the value, which you have testified is an arbitrary figure.

Mr. **Watson**. Yes, sir.

Senator **Heflin**. Then you calculated it based at $150,000. Normally base is what you paid for it, was the starting point. But in this it is the recapture of certain things, which include the recapture of fees of $88,500 plus the value of what are these figures that are on this exhibit 5, which I assume is a net of $12,033.50 from the thing.

Those went into your base, and not into the calculation of the value of the loss, did they not?

Mr. **Watson**. Senator, it has been well—established I know very little about a schedule D.

Senator **Heflin**. All right, sir. I am trying to figure where else, other than the $12,000—now Ms. Travaglia wasn't with you at the time that you figured out this.

Mr. **Watson**. No, sir. She was not.

Senator **Heflin**. Well, this is a justification for what she did.

Mr. **Watson**. That's—that's what you'd call it.

Senator **Heflin**. And you come out with three theories to calculate the $250,000.

Mr. **Watson**. That's correct.

Senator **Heflin**. You must have had some knowledge of it.

Mr. **Watson**. Yes.

Senator **Heflin**. You used this figure of $12,000 on the equipment, books, and leases, and you subtract the prior depreciation and you come out with a net of $12,000. But you used that into the figure of $150,000, as the base, rather than adding it, in any way, to the value of clients' list, and all of the other assets of the evaluation, do you not?

Mr. **Watson**. Senator, I've testified, this was a piece of paper, rough notes of mine, that were recreated 3 years after the tax return was prepared, as I recall, to satisfy the client who has raised a question over an issue of which I can't do anything except attempt to explain.

The $250,000, my recollection of, the first reference to that was suggested to be Ms. Travaglia. Now I really don't know what difference it makes because I agreed with it.

Senator HEFLIN. Well, it just follows that whatever you are doing 3 years later, you are following the concept that was used, and you give some explanation—

Mr. WATSON. No.

Senator HEFLIN [continuing]. For how it is calculated.

Mr. WATSON. That's not correct.

Senator HEFLIN. Well, is that not what Judge Claiborne asked you for?

Mr. WATSON. You have asked me a question and then made a conclusion. The $250,000 was arrived at—my recollection is Ms. Travaglia suggested that to me, along with this procedure, which I agreed with.

I am recognizing, and what I would have thought in my opinion is to be a very conservative amount. OK. Why would I need to justify anything, if I'm satisfied with the figure? Why would I have to justify anything?

She gave me a figure of $250,000, or we mutually agreed that $250,000 is a reasonable figure. That's the end. Put the $250,000 on there. It sounds OK to me, I believe she testified, or it's written down somewhere, that it sounds OK to me. It did. So we did it.

Now 3 years later the judge is in trouble, and he wants to know how was this figure arrived at. I didn't represent to him that this is how I arrived at it.

We represented—at least I thought I did—that this is how you do arrive at a business evaluation, and that is how you do arrive at the number on that sheet, which Ms. Travaglia put down, which I've already said I thought was reasonable.

Senator HEFLIN. Well, let me ask you this. I will try to cut it short. Is it your testimony, that Judge Claiborne bears responsibility, or bears no responsibility, or bears partial responsibility for the incorrect return filed, which is largely the schedule D in the 1980 return?

Whose responsibility is it? Was it your responsibility? Ms. Travaglia's responsibility? Give us an evaluation of where you think the responsibility and the fault lies for the incorrect return.

Mr. WATSON. The final responsibility for the filing of income tax returns rests on the taxpayer. Now this is not a criminal matter. This is an error, a regrettable error. It could have been adjusted in an audit, and about the most severe thing that would have happened to Judge Claiborne is, he may have been assessed a 5-percent negligence penalty and he may have had to pay some additional interest.

That's the kind of problem this is.

Senator HEFLIN. All right, sir. Let me just ask you one or two questions remaining. On form 2119, that is the sale of the principal residence—of the 1980 tax return—now you have testified that that is filled out in your handwriting.

Mr. WATSON. Yes. I filled that out.

Senator **Heflin**. All right, sir. Can you give us any explanation of how, under line 4, that you subtract $410,188 as commissions and other expenses of sale?

Mr. **Watson**. Senator, I've testified to that the first day we were here, and it has been determined I made an error. I put an item on the wrong line and compounded it by making a simple arithmetic error. So I've testified, I filled this out. It is incorrect.

Senator **Heflin**. All right. That is all.

The **Chairman**. While you have got that form 2119 in front of you, is the name of the taxpayer, Harry E. Claiborne, in your handwriting, as well as the rest of the page?

Mr. **Watson**. No, sir.

The **Chairman**. Who wrote that?

Mr. **Watson**. It appears to be Charlotte Travaglia's.

The **Chairman**. But it is not yours. Everything else on the page is your handwriting?

Mr. **Watson**. Yes. I believe everything on this tax return is in Charlotte's handwriting, with the exception of my signature on the bottom, and these calculations on the 2119.

The **Chairman**. Senator Bingaman.

Mr. **Watson**. Everything else on the tax return was prepared by Charlotte.

Senator **Bingaman**. Mr. Watson, could I just try to clarify in my own mind exactly what Judge Claiborne provided to you and what you asked him to provide to you, to prepare the 1980 return. As I understand your earlier testimony, he provided you with these 6 pages which are labeled as defendant's exhibit 10, and he also provided you with this 3-page document that you have given the committee today, that is now called committee exhibit 6.

Is that all he gave you, which, in a written form, describing his financial situation?

Mr. **Watson**. To the best of my knowledge, that is what it was in writing, but he did give us other information. Now this is—I am recollecting, and I am reasonably sure, that he gave me copies of his purchase—the purchase—the escrow papers buying the house, the escrow papers on each of the parcels he added to the house, the escrow papers on when he sold the house, when he bought his new house.

And I know he had a big box of contractors' invoices that had been——

Senator **Bingaman**. Did he give you bank statements?

Mr. **Watson**. Beg your pardon?

Senator **Bingaman**. Did he give you bank statements?

Mr. **Watson**. He could have. I don't remember for sure.

Senator **Bingaman**. He testified, I believe, that it was his practice, and this was in connection with questions about Mr. Wright's preparation of his tax returns. It was his practice to put a big manila folder together, and put all of the bank statements and other pertinent information together and take them down to Jay Wright. I am just wondering: did he give you a similar collection of written materials to substantiate his financial transactions in 1980?

Mr. **Watson**. I can't recall bank statements in particular, but I have no reason to believe that he didn't, and it wouldn't be unusual.

Senator **Bingaman**. And do you know about 1981, or 1982, if that practice was followed?

Mr. **Watson**. As near as I can recollect, Judge Claiborne did the same thing each year.

Senator **Bingaman**. That is all I had, Mr. Chairman.

The **Chairman**. Now Mr. Goodman, do you have any questions of Mr. Watson?

Mr. **Goodman**. I do, Mr. Chairman. I have a request, however, with the permission of the Chair.

It has been a long day for Judge Claiborne. He gets up very early, in very bad circumstances. He is going to have an interesting day tomorrow where he is going to have to be alert to answer the questions of the committee.

I would respectfully ask that we adjourn for the evening because of that.

The **Chairman**. About how long would you estimate you would want to——

Mr. **Goodman**. It depends. I would say 15 to 20 minutes.

The **Chairman**. And you, Mr. Chabraja?

Mr. **Chabraja**. I have very few questions.

The **Chairman**. Well then we will start with Mr. Watson in the morning, Mr. Goodman.

Mr. **Goodman**. Thank you. I have some additional requests, Mr. Chairman.

Every day we end up this way, and I think it is because of what the Founding Fathers said when they wrote the Federalist Papers, that this is a trial for the Nation, but apparently, there are people out there who believe that you gentlemen are affording my client a fair hearing.

And perhaps for the first time since this investigation has begun, people who were fearful of coming forward are no longer fearful.

We received a phone call over the break, that a former employee of Joseph Wright spoke to my office, and advises that while she was employed by him, she received the letter from Judy Ahlstrom.

I would respectfully ask that a subpoena request be granted for a woman by the name of Ellen Arthur, who says she was the office manager at that point in time.

I have a phone number for her. I would welcome the committee's investigator, or investigative sources, to speak with her. I have not spoken with her. This is the first the information comes to me, but I believe it is crucial. It is a major issue that has never been litigated before, as to the arrival of the April 11, 1980 letter, and the only excuse I can make is that there was a feeling of fear and terror in the Las Vegas community at the time that this investigation was taking place, and these people never came forward before.

Senator **Rudman**. Mr. Chairman, Mr. Goodman tells us this woman claims she received the April 11 letter that we have been talking about here. Is this woman any longer in this gentleman's, Mr. Wright's employ?

Mr. **Goodman**. I do not know.

Senator **Rudman**. You do not know that.

The **Chairman**. Senator Warner.

Senator **Warner**. Thank you. Just a few questions to clarify the witness situation.

You indicated in your response to me, that a Mrs. Farrell was the one that received the tax return, and she made the decision it was in final form and ready to file. Is that correct?

Mr. **Watson**. To the best of my knowledge, she got—she did not have any authority to make any final decisions. The woman merely presumed. If I could just tell you, briefly. When Judge Claiborne comes into the office he's usually in a hurry, and I'm pretty sure Mrs. Farrell knew who Judge Claiborne was, and I'm reasonably sure she would have thought he's an important man. If he came up to pick up his tax return, I'm reasonably sure she would have tried to accommodate him, thinking she was acting in my best interests, if nothing else, so the busy man doesn't have to come back.

And I am speculating that that's how he got the return and that's who he got it from.

Senator **Warner**. Well, now you say speculating. It's been brought to my attention that Mrs. Farrell did not handle the return but a woman by the name of Angela Lai handled the return.

Mr. **Watson**. I can't remember. There's——

Senator **Warner**. Well, it is fairly important because it is critical to know——

Mr. **Watson**. Which one?

Senator **Warner** [continuing]. What he did at the time he picked that return up.

Mr. **Watson**. The one I thought it was was Adelle Farrell.

Senator **Warner**. All right. Is Angela Lai now in your employ?

Mr. **Watson**. No; she's not. I don't remember even who Angela Lai is. She probably was someone who worked for me as a clerk during the tax season. And it may have been Angela that gave it to her. Somebody gave him the return. There was a clerk at the front desk. I thought it was Adelle Farrell.

Senator **Warner**. That is all I have, Mr. Chairman.

Senator **Pryor**. Mr. Chairman, I have one question. I promise you I will not ask but one question. I promise you.

The **Chairman**. Senator Pryor is recognized for one question.

Senator **Pryor**. Mr. Watson, were you ever offered, by an agent of the U.S. Government, immunity from prosecution if you would assist in the ultimate indictment of Judge Harry Claiborne?

Mr. **Watson**. Not in so many words.

Senator **Pryor**. What do you mean? Can I continue that line in the morning, Mr. Chairman?

The **Chairman**. I will ask it for you. What do you mean?

Mr. **Watson**. What you're saying, what you're—what I'm perceiving that you're saying to me is, that they came to me and sat down and attempted to negotiate, that if I would sell my testimony they would buy it. That is not what happened.

No one ever came to me from either side, and says if you'll testify this way, we'll do this. If you'll allow me, I will tell you about the incidents, the first incident that I considered harassment, involved the Internal Revenue Service agent telling me to take a pencil—or saying, "Do you have a pencil?," I believe was the terms he used. And of course I'm at my desk and I do have. And I wrote down on a yellow piece of paper what he instructed me to write, which had to do with a couple of code sections of some sort. Asked me if I knew what they were, and I said, "No, sir, I don't."

He—and I wrote it down, and I happen to have a copy of that note that I made at that meeting, and I wrote down what he said.

As I recall, it was, "You had better become very familiar with these two items before you testify before the grand jury."

If I'm not mistaken, that was on my second meeting with Mr. Skelton and Mr. Jesinger. I found out what those two code sections meant.

It had something to do with conspiracy and fraud. I took that to mean that they were threatening me, or implying that I might be willing to conspire, or commit fraud.

The other remarks that had been made to me was: "Why are you sticking your neck—why are you going out on a limb? You're going to go out on a limb and they're going to saw it off right under you, and you're a smarter man than that."

There are other statements that I'd have to reflect back on my testimony to see exactly what they were, but this was the kind of statements that were made to me.

Now it was implied that I was lying, and, more than anything else, I think they were implying that I was being made a fool of. That I was doing something to cover up for Judge Claiborne, and the ultimate end was, I would get it. Now, Senator, I didn't believe that then, although I felt intimidated by it. It did not shape my testimony. I did not feel then, and I don't feel now, that Judge Claiborne has done anything wrong, criminally, on that tax return.

The CHAIRMAN. Thank you. Mr. Watson, you will be prepared to return to the stand at 9 o'clock tomorrow morning.

Now, Mr. Goodman, if this witness that has just volunteered is available, given the time difference between Washington and Nevada, would it not be possible for you to get an affidavit overnight, which we can consider tomorrow?

Mr. GOODMAN. I will certainly make every effort.

The CHAIRMAN. And we will give it further consideration, then, upon receipt of the affidavit.

Mr. GOODMAN. Very good.

The CHAIRMAN. The committee will stand in recess.

Mr. GOODMAN. Mr. Chairman, one last matter. I do not know whether the committee had before it what has been marked for identification as Claiborne, as 27, which is an order from the Nevada Supreme Court.

I know that there has been some expression of interest in the actual order itself, and the Nevada Supreme Court has indicated that they are going to conduct an independent investigation, and hearings, on the question as to whether or not Judge Claiborne received fundamental due process at his trials, as it would relate to the potential of his keeping his license.

The CHAIRMAN. What is the date of that order?

Mr. GOODMAN. This order was filed September 16, 1986, and we just had it "zapped," I think it is called, to us.

The CHAIRMAN. Well, we will see that the members are in possession of it tomorrow.

Mr. **Goodman**. Thank you.

Mr. **Chabraja**. Mr. Chairman, I want to respectfully urge the chairman—I know you are trying to save time—not to accept hearsay affidavits on points of crucial evidence.

The **Chairman**. I assure you, Mr. Chabraja, we are not. We are simply trying to get a better measure of the value of this testimony, but we are not accepting it as evidence.

Mr. **Chabraja**. Thank you, Mr. Chairman.

The **Chairman**. And have no intention of doing so.

Mr. **Chabraja**. I appreciate it.

The **Chairman**. The committee stands in recess until 9 o'clock.

[Whereupon, at 6:48 p.m., the committee recessed, to reconvene at 9 a.m., Tuesday, September 23, 1986, at the same place.]

SENATE IMPEACHMENT TRIAL COMMITTEE

Appointed Upon the Adoption of Senate Resolution 481, 99th Congress, 2d Session, Pursuant to Rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials

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TUESDAY, SEPTEMBER 23, 1986

U.S. SENATE,
SENATE IMPEACHMENT TRIAL COMMITTEE,
Washington, DC.

The committee met, pursuant to notice, at 9:25 a.m., in room SD-325, Russell Senate Office Building, Hon. Charles McC. Mathias, Jr. (chairman) presiding.

Present: Senators Mathias, Sarbanes, Bingaman, DeConcini, Gore, Pryor, Heflin, Warner, Rudman, Pressler, Hatch, and McConnell.

Managers and counsel from the House of Representatives present: Peter W. Rodino, Jr., Robert W. Kastenmeier, William J. Hughes, Romano L. Mazzoli, Dan Glickman, Hamilton Fish, Jr., Henry J. Hyde, Michael DeWine; Nicholas D. Chabraja, special counsel; and David DeBruin, associate special counsel.

House Judiciary Committee staff present: M. Elaine Mielke, general counsel; Alan F. Coffey, Jr., associate general counsel; Judith Bailey, counsel; Daniel M. Freeman, counsel; Gary Goldberger, counsel; Warren S. Grimes, counsel; Joseph V. Wolfe, counsel, and Jonathan R. Yarowsky, counsel.

Respondent and counsel present: The Honorable Harry E. Claiborne, respondent; Oscar Goodman, counsel; Senator Howard Cannon, counsel; Michael V. Stuhff, associate counsel, and David Z. Chesnoff, associate counsel.

Staff present: Michael Davidson, counsel; Floyd M. Riddick, consultant; John B. Childers, staff director; John F. Rixey, Jr., deputy staff director; Anthony L. Harvey, clerk; Byron F. Hoover, assistant clerk; Gerald B. Gereau, security coordinator; Ann Pincus, press liaison; and Randy Dove, press liaison.

The **CHAIRMAN**. The committee will come to order.

Mr. Watson will please come to the witness stand.

Mr. Watson, I once again remind you that the oath you previously took is still binding upon you.

Mr. **WATSON**. I understand, sir.

Senator **HEFLIN**. Mr. Chairman, I do not recall positively, but in the event that the 1981 tax return, and the telegram have not been identified and admitted in evidence as exhibits, I would suggest that we do so. We probably ought to call them committee exhibits since we produced them.

Mr. **Goodman**. We have no objection to those being admitted into evidence.

Mr. **Chabraja**. No objection.

The **Chairman**. Since there is no objection, both of those items which were previously marked by the clerk as committee exhibits shall be admitted.

[Whereupon, committee exhibits 5, 6, and 7 were received in evidence.]

The **Chairman**. Mr. Goodman, you are prepared for redirect.

Mr. **Goodman**. Good morning, Mr. Chairman, members of the committee.

CROSS EXAMINATION

Mr. Watson, I would like to clarify a couple of issues, if we can, to start off the day. As I understand it, when you had your discussions with Judge Claiborne, they were general discussions rather than particular discussions, is that correct?

Mr. **Watson**. That's my recollection.

Mr. **Goodman**. Judge Claiborne never discussed with you what procedure was going to be utilized as far as the preparation of the return in treating business losses?

Mr. **Watson**. That's also my recollection.

Mr. **Goodman**. It is a fact, is it not, that at no time was reference made to a schedule D in any conversation?

Mr. **Watson**. No, sir.

Mr. **Goodman**. In other words, Judge Claiborne gave you the information about his business losses, and you made the determination as to how the—when I say you, I am talking about——

Mr. **Watson**. The firm.

Mr. **Goodman** [continuing]. Creative Tax Planning. Your office made all the determinations as to how they were to be treated on the return?

Mr. **Watson**. I've previously testified to that, Mr. Goodman, and that is correct.

Mr. **Goodman**. Now I would like to go to another area, please, and that is the time that you were of the frame of mind that you had to seek legal counsel. When is the first time, Mr. Watson, that you felt you had to go to a lawyer concerning the investigation into Judge Claiborne's activities?

Mr. **Watson**. After my testimony at the Reno grand jury. After I testified at Portland and Reno, that's when I decided that I had a little problem.

Mr. **Goodman**. Well, what caused you to seek counsel after your appearance up in Reno, NV?

Mr. **Watson**. I, as already previously explained, I kept having the encounters with the various officers—IRS, FBI, and Justice Department, and my feeling was that these people are trying to do something to me, and then that reaction—I didn't see any other alternative except to get an attorney.

Up to that time, I really never thought it was anything to be concerned about.

Mr. **Goodman**. Did you have a conversation with anybody about hiring legal counsel?

Mr. **Watson**. Yes. I did.

Mr. **Goodman**. Who was that?

Mr. **Watson**. Hank Greenspun.

Mr. **Goodman**. Who is Hank Greenspun?

Mr. **Watson**. Mr. Greenspun is the publisher of the Las Vegas Sun.

Mr. **Goodman**. Where did the conversation take place?

Mr. **Watson**. I can't recall. It seems to me it was in his office.

Mr. **Goodman**. When did it take place?

Mr. **Watson**. Shortly after that Portland grand jury—or shortly after the Reno grand jury.

Mr. **Goodman**. Who else was present?

Mr. **Watson**. I don't recall.

Mr. **Goodman**. Why did you go to Mr. Greenspun?

Mr. **Watson**. Well, Mr. Greenspun has a tremendous interest in seeing that justice is done, in my opinion, and he is a very vocal and outspoken person, particularly in the area of citizens' rights, and I just thought, well, I'll go talk to him about it.

Mr. **Goodman**. Now did you in fact have a discussion with him?

Mr. **Watson**. Yes. I did.

Mr. **Goodman**. What did you tell him?

Mr. **Watson**. I—well, I might have waxed a little poetic, but what I told him was, generally is, I thought these people were trying to put me in jail.

Mr. **Goodman**. What did he say?

Mr. **Watson**. He, he asked me if I had an attorney, and I said, well, I know a number of attorneys, and he said, "You are going to have to have a very good attorney, and I'm going to recommend one to you."

Mr. **Goodman**. Did he in fact make a recommendation?

Mr. **Watson**. Yes. He did.

Mr. **Goodman**. Who was the person that he recommended?

Mr. **Watson**. Larry Semenza.

Mr. **Goodman**. Where was Mr. Semenza's office?

Mr. **Watson**. Reno, NV.

Mr. **Goodman**. Was there any discussion as to who was going to compensate Mr. Semenza?

Mr. **Watson**. Not at that time. As a matter of fact, that was kind of up in the air, but, as it later turned out, it was Mr. Greenspun.

Mr. **Goodman**. Judge Claiborne had nothing to do with that decision, did he?

Mr. **Watson**. I never discussed that with Judge Claiborne, that I recall. Mr. Greenspun, I believe indicated he would guarantee any legal expenses.

Mr. **Goodman**. All right. Now you have taken the position, as far as these proceedings are concerned, that at one point in time you asserted a fifth amendment privilege, and then, apparently, you brought Mr. Semenza back as your counsel, is that correct?

Mr. **Watson**. Well, I asserted the fifth amendment on the advice of Mr. Semenza after the proceedings last week. We've had a chance to, to talk extensively on the phone, and we've had a chance to talk a little bit in person. I had a chance to review my own testimony, and as a result of the review of that testimony, Mr. Semenza said that he thought I was prepared to answer any questions that were directed to me, honestly, and completely.

Mr. **Goodman.** Who is going to compensate Mr. Semenza for his representing you here, in Washington?

Mr. **Watson.** We have not completely arrived at that decision at this time.

Mr. **Goodman.** Judge Claiborne does not have anything to do with that, does he?

Mr. **Watson.** No, sir. He doesn't. I have not spoken to Judge Claiborne.

Mr. **Goodman.** All right. Now the last matter that I would like to discuss with you is some of your clients.

Are you familiar with a company by the name of PVI Tax Control, Inc.?

Mr. **Watson.** Yes. I am.

Mr. **Goodman.** What is that?

Mr. **Watson.** That was the first accounting business that I had a, an involvement in.

Mr. **Goodman.** All right. And you were what? One of the partners?

Mr. **Watson.** Yes. I was.

Mr. **Goodman.** Was that concern placed in an involuntary bankruptcy?

Mr. **Watson.** Yes. it was.

Mr. **Goodman.** Was it placed in an involuntary bankruptcy as a result of your customers or clients filing certain actions against you?

Mr. **Watson.** Yes. It was.

Mr. **Goodman.** Did they take the position that they had given you moneys which you were supposed to forward to the IRS, and in fact those moneys were not forwarded?

Mr. **Watson.** That's correct.

Mr. **Goodman.** Among those customers, or clients that you had, were professional people, were they not?

Mr. **Watson.** Yes. There were.

Mr. **Goodman.** Doctors?

Mr. **Watson.** The, the three people who brought the action weren't physicians. One owned a, a medical assistance training school.

Mr. **Goodman.** And he was using your services, right?

Mr. **Watson.** It was a lady, and, yes, she was.

Mr. **Goodman.** She was using your services?

Mr. **Watson.** Yes. She was.

Mr. **Goodman.** And you were going to do some tax planning for them, correct?

Mr. **Watson.** We did tax, bookkeeping, and accounting for that plant.

Mr. **Goodman.** All right. And who else sued you?

Mr. **Watson.** One of the companies was a large ornamental iron company, and the other company was involved in heating and air—heating and air-conditioning, and they, too, were a rather substantial company.

Mr. Goodman. These are responsible business people in the Las Vegas community, correct?

Mr. Watson. They feel that they are.

Mr. Goodman. And physicians?

Mr. Watson. Well, yes, I've had physicians as clients.

Mr. Goodman. Well, you had one physician, Dr. Mavil, did you not? Maybe I am not pronouncing it properly. Mavil?

Mr. Watson. Dr. Mavil had been a client of mine.

Mr. Goodman. Right. And was not Dr. Mavil somehow involved in this process of the involuntary bankruptcy?

Mr. Watson. Dr. Mavil, as I recall, had been a co-owner of the, of the medical school, or the medical assistance training school. So he, indirectly, was a client of mine in that respect, plus, Dr. Mavil was not, as I recall, a direct action in that bankruptcy proceeding, but we also did the accounting—the firm, PVI Tax Control, did the accounting for Dr. Mavil at the same time we were doing it for the other entity.

Mr. Goodman. When these folks would come in to you to discuss whether or not Creative Tax Planning, or Jerry Watson, or PVI, or whatever concern you had, could service them regarding their tax situation, or their business situation, or their bookkeeping situation, Jerry Watson would say to them, "We sure can."

Mr. Watson. I would reassure them that we could deal with their problems.

Mr. Goodman. "We've got somebody in the office right now who could take care of everything that you need." Correct?

Mr. Watson. That is correct, Mr. Goodman.

Mr. Goodman. Now you ran, did you not, recently, for the office of public administrator in Clark County, NV?

Mr. Watson. Yes. I did.

Mr. Goodman. Would I be incorrect if I suggested to you that one of the representations which was made in the local media was that, "Jerry Watson, Candidate For County Administrator, Certified Public Accountant, Indicates If Elected He'll Abolish The Office."

Mr. Watson. If you indicated certified public accountant it had to be a typographical error.

Mr. Goodman. But did you not see that?

Mr. Watson. I did see that.

Mr. Goodman. Thank you. Nothing further.

The Chairman. Mr. Chabraja.

CROSS EXAMINATION

Mr. Chabraja. Mr. Watson, I would like to examine you today about committee exhibits 5 and 7.

Mr. Goodman. Pardon me, Mr. Chairman. Could we have committee exhibit 7 identified. We are having difficulty——

Mr. Chabraja. Committee exhibit 7, according to the markings that I have received, Mr. Goodman, is the 1981 tax return.

Mr. Goodman. Thank you.

Mr. Chabraja. Mr. Watson, directing your attention to committee exhibit No. 5, which is the yellow sheet you produced yesterday, just to place it in context, my recollection of your testimony is that this is a sheet you prepared some time in 1983——

Mr. WATSON. That is my recollection. I believe it was between——

Mr. CHABRAJA. Between the two grand jury——

Mr. WATSON. Between the two grand juries.

Mr. CHABRAJA [continuing]. Sessions, and you made this document in response to a demand by Judge Claiborne that you tell him how you did the 1980 income tax return schedule D?

Mr. WATSON. That's correct.

Mr. CHABRAJA. And he asked you how can you support that schedule, and this is your effort to tell him?

Mr. WATSON. Yes. He did.

Mr. CHABRAJA. OK. Now let's take a look at that. I realize that you testified at some length about that yesterday, and I remember in particular that Senator Gore was taking you down the list of items where there were values—value of client list, and value of phone numbers, and yellow pages, and cross-referenced the phone number. And if I remember your testimony, you said that at least with respect to those first couple of items, you had mentioned them to Judge Claiborne, had a discussion with him, but yet supplied the number. It was your own estimate of value?

Mr. WATSON. That's correct.

Mr. CHABRAJA. OK. I wanted to ask you about one of those there, "accumulated briefs, points and authorities." Now certainly you discussed that with Judge Claiborne, did you not?

Mr. WATSON. Not really. I made that determination based on a fact that although I'm not an attorney, I do maintain a large number of files that I repetitively use, and I would have figured that my files and papers would be worth $25,000, and I made the arbitrary decision to use that number there, as I recollect.

Mr. CHABRAJA. So it was your decision to value a group, or a collection of old legal authorities in Judge Claiborne's office?

Mr. WATSON. Yes. I thought they had value.

Mr. CHABRAJA. Mr. Watson, with all due respect, the words, "points and authorities" is a very lawyerlike word. Where did you even come up with that word, or group of words?

Mr. WATSON. Well, I've heard that before.

Mr. CHABRAJA. You have?

Mr. WATSON. Yes, sir.

Mr. CHABRAJA. OK. And this was not suggested to you by Judge Claiborne?

Mr. WATSON. No. I've been in courtrooms before.

Mr. CHABRAJA. Now, going down that value list a little further, I see that you have "uncollected accounts receivable," $88,500, right?

Mr. WATSON. Yes, sir.

Mr. CHABRAJA. And so you used these very same receivables, the 1980 income, in your building of the fair-market value of this business?

Mr. WATSON. I had a vivid memory of $88,500 in 1983.

Mr. CHABRAJA. OK. And as I understand the examination that was brought out by Senator Heflin, and others, that the upper, almost seven-eighths of this sheet, up to the word, up to the numbers 250,000, are various methods by which you were attempting to show that the business, in your opinion, had a fair-market value of $250,000?

Mr. WATSON. I was trying to show it had at least a fair- market value——

Mr. CHABRAJA. At least.

Mr. WATSON [continuing]. Or more than that.

Mr. CHABRAJA. But that is what we are talking about, a fair-market value?

Mr. WATSON. That's correct.

Mr. CHABRAJA. And on the 1980 tax return, that fair-market value that you now show how you did, or how Charlotte, or how someone did back in 1981, would up on the line on schedule D that said, "Cost or Other Adjusted Basis," did it not?

Mr. WATSON. Yes, sir.

Mr. CHABRAJA. OK. So we have no doubt about that. And certainly, you used the $88,500 as an element of constructing this fair-market value, did you not?

Mr. WATSON. That seems to be obvious from the document.

Mr. CHABRAJA. OK. What is more, you have a line here, "Cases Pending and Not Yet Closed," of $40,000. What is that?

Mr. WATSON. That's—and this is in 1983.

Mr. CHABRAJA. Yes.

Mr. WATSON. I knew that Judge Claiborne, and subsequent to the 1980 tax return, had some other cases he was going to get paid off on.

Mr. CHABRAJA. In 1981 you knew he picked up another $40,000——

Mr. WATSON. Well, this is 1983.

Mr. CHABRAJA. Yes, but you knew the——

Mr. WATSON. Well, naturally I'd know that because this is 1983; that was 1981.

Mr. CHABRAJA. And you built that in as well into the fair-market value of this business, right?

Mr. WATSON. That's correct.

Mr. CHABRAJA. OK. Now——

Mr. WATSON. Just one moment. This document was created in 1983——

Mr. CHABRAJA. Oh, I understand that.

Mr. WATSON. OK. Just as long as you understand.

Mr. CHABRAJA. Oh, no. Well, I think that everybody understands that from yesterday's testimony.

Mr. WATSON. OK.

Mr. CHABRAJA. But you were trying to fairly recapitulate here what you think was done to build this $250,000 estimate of fair-market value?

Mr. WATSON. Illustrating to Judge Claiborne the terms and conditions under which we would value that practice, and attempt to support that, if that tax return had been audited.

Mr. CHABRAJA. And you showed this to him?

Mr. WATSON. I think I sent Judge Claiborne a letter.

Mr. CHABRAJA. OK. Now we get down to the bottom here where you show the value of the law practice used on the tax return of 250,000. Right? You see it?

Mr. WATSON. That's correct; yes, sir.

Mr. CHABRAJA. Last paragraph. And we have agreed, already, that that $250,000 showed up on schedule D under the column called "Cost or Other Adjusted Basis"?

Mr. WATSON. We have already established that there are considerable errors made on the schedule D.

Mr. CHABRAJA. And in that one——

Mr. WATSON. And I'm willing to admit, again, there's a lot of mistakes on schedule D.

Mr. CHABRAJA. Let's move on. One of the things that you and I talked about at considerable length was how the $150,000 number got put together, and I am wondering if this sheet sheds any light on that?

Mr. WATSON. It sheds no more light than before. As I explained to you, which I indicated here again, and I wrote this long before I knew you'd be asking me the questions, that we had included that—inappropriate this may have been—it was included in a figure, $150,000.

Mr. CHABRAJA. OK. Now if we look at that line, you show that the $150,000 is, "Values above plus $88,500 collected." Now you still cannot tell me what "values above" you relied on to make up that $150,000?

Mr. WATSON. No. I can't tell you all of the elements that are in the $150,000. I already testified to that, too.

Mr. CHABRAJA. And as I understand your testimony, that $150,000 is the $150,000 that wound up on schedule D as "Sales Price," right?

Mr. WATSON. I can't recall—we have already determined I know very little about the schedule D.

Mr. CHABRAJA. But let's point out something that we have not already discussed, Mr. Watson. The 88,500 is included up above in your assessment of the value of this business, right?

Mr. WATSON. It's included as a——

Mr. CHABRAJA. As a component of value.

Mr. WATSON. Wait a minute. What you're talking about—let me explain what my theory on this appraisal was.

Mr. CHABRAJA. Please.

Mr. WATSON. It's to go from at least a couple of different directions to see if you can figure out what it's worth. One of them was, what does it consist of? Well, to the best of my knowledge and belief, I completed that in those value judgments, and that's what they were, is value judgments.

I knew for sure about two figures on here. It's an opinion, and that's what appraisers give you.

No. 2, I took the prior business earnings, which has a bearing on what you can sell a professional business for, or any other business, and I have sold other businesses, professionally.

And then I took what had purported to me to have been a bona fide offer. So I knew he was offered $500,000.

I knew that he had earned $166,000 a year, and I estimated the values in the business, physical values, to be 353, arriving at a figure of some $350,000, which I felt comfortable with.

Mr. CHABRAJA. Mr. Watson, follow me for a moment, OK? Follow me. As I understand this, there are three different methods for evaluating the business. One of them is a multiple times average earnings; the other one is a recapitulation of asset values; and the other one is former offers. Right?

Mr. **Watson**. That's my understanding.

Mr. **Chabraja**. Those concepts are not foreign to anyone who buys and sells businesses. I directed your attention to the asset recapitulation, and I pointed out to you that you used the $88,500 in that asset recapitulation, right?

Mr. **Watson**. Yes. You're right. It's written right here on this page.

Mr. **Chabraja**. All right. Now let's go further.

You established fair-market value using those receivables and now, you want to deduct them down here, don't you? You have used it in two places. You have used them both in establishing the fair-market value, and now, you are using them in creating a hypothetical sales price, are you not?

Or am I reading this wrong?

Mr. **Watson**. That's what it appears to me to be.

Mr. **Chabraja**. All right. And interestingly enough, if we turn to the 1981 tax return, and look at schedule D—and this is committee exhibit 7—your approach to the problem becomes crystal clear, does it not?

Mr. **Watson**. Schedule, schedule D?

Mr. **Chabraja**. Yes. schedule D.

Mr. **Watson**. Yes, sir.

Mr. **Chabraja**. And what happens in 1981, from my examination of this return, apparently is that Judge Claiborne received another $40,000 in legal fee income during the year 1981, did he not?

Mr. **Watson**. I believe that to be correct.

Mr. **Chabraja**. And from my examination of this return, neither you or anyone else involved with it, including Judge Claiborne, saw to it that that $40,000 was reported as income, is that not true?

Mr. **Watson**. The same procedure on the 1980 tax return carried forward onto the 1981.

Mr. **Chabraja**. Well, here, what you did was take $40,000 of ordinary income and set it off, once again, as a sales price on a business, and wrote it off against that loss that you had artificially created in 1980, is that not about the sum of it?

Mr. **Watson**. That's what this return reflects.

Mr. **Chabraja**. OK. Now this return, does it not, at the second page, bears the signature of Harry E. Claiborne?

Mr. **Watson**. Yes, sir. It does.

Mr. **Chabraja**. And you are familiar with that signature?

Mr. **Watson**. Well, I'm—it, it appears to be Judge Claiborne's signature.

Mr. **Chabraja**. Did he sign it in your sight and presence?

Mr. **Watson**. I don't recall.

Mr. **Chabraja**. You do not recall in October 1982, sitting with Judge Claiborne and going over this return?

Mr. **Watson**. I previously testified that I remembered him picking up a return. I remember delivering a return. I remember meeting with Judge Claiborne. To be honest with you, I don't specifically recall sitting down and reviewing this on October 13. I may have.

Mr. **Chabraja**. So you cannot shed any light, I take it, on the conversations between you and Judge Claiborne with respect to the filing of the 1981 tax return?

Mr. **Watson**. No. I'm—I know we would have had a conversation. I know it would have probably been about that time, but I can't recall the specifics of the conversation.

Mr. **Chabraja**. Let's take another little look at this return. As I understand the figures you have put on here, they show W-2 income from judicial salary of $66,583.26.

Mr. **Watson**. That's correct.

Mr. **Chabraja**. And we know that we have other income from the law practice of $40,000. We have just discussed that.

Mr. **Watson**. That's correct.

Mr. **Chabraja**. So we have in the year 1981, a total of $106,000, or more, of ordinary income, do we not?

Mr. **Watson**. Crystal clear. It's exactly the same procedure that was used previously.

Mr. **Chabraja**. And yet, with respect to that, we have here reported adjusted gross income of only $68,000?

Mr. **Watson**. That's correct.

Mr. **Chabraja**. And we have a tax for this year of 1981 of only $4,000, do we not?

Mr. **Watson**. $4,083.

Mr. **Chabraja**. OK. And I want to make this crystal clear, Mr. Watson. I want you to tell the gentlemen of this panel every last thing you can remember about your discussions with Judge Claiborne, leading to the execution of this return, and, in particular, schedule D.

Mr. **Watson**. I had less discussions with Judge Claiborne over the preparation of this return than I had had on the prior returns. In the meantime, Ms. Travaglia, whose memory is vague on why she left my firm, had left the firm.

Another lady had joined my organization who represented herself to me to be a CPA in the State of Montana. She was a 50-ish year old woman, seemed competent, was ready to go to work, willing to work part-time.

Her name was Peggy Kotecki, now Ake, spelled A-k-e. Miss Ake picked up Judge Claiborne's old files when he brought in his additional information and she prepared this return.

I believe she even wrote me a memo that said, "I'm going to use the same procedure on this return that was used previously." So——

Mr. **Chabraja**. How did she know the procedure?

Mr. **Watson**. It's written right on, written right on the form, and I believe that we discussed it with her.

Mr. **Chabraja**. You discussed it with her?

Mr. **Watson**. I discussed it with her.

Mr. **Chabraja**. OK. So, 1980, as I understand it, was something that you and Judge Claiborne did not get together and discuss and create schedule D, is that right?

Mr. **Watson**. No. Judge Claiborne and I had less conversations——

Mr. **Chabraja**. Now let's go back to 1980. In 1980, you and Judge Claiborne did not create this schedule D together in your conversations, did you?

Mr. **Watson**. Mr. Chabraja, Judge Claiborne and I——

Mr. **Chabraja**. Answer my question if you would.

Mr. **Watson** [continuing]. Did not sit down and discuss——

Mr. **Chabraja**. All right.

Mr. **Watson** [continuing]. How we were going to use a schedule D.

Mr. **Chabraja**. And as a matter of fact, according to your testimony, this was all the fiction of poor Charlotte Travaglia, is that not right?

Mr. **Watson**. No. I did not say that.

Mr. **Chabraja**. Well, let's move on. If it was not Charlotte——

Mr. **Watson**. No, I didn't say——

Mr. **Chabraja**. It seemed to me I sat here for 2 days and listened to you blame Charlotte Travaglia for——

Mr. **Watson**. Well, what you asked me was, was this all the fiction of Charlotte Travaglia, and I answered your question no, because you have a word in there——

Mr. **Chabraja**. All right. Let me take that word out. Is the creation of schedule D, in 1980, all Charlotte Travaglia?

Mr. **Watson**. Charlotte Travaglia filled in the figures and she has testified to that. Charlotte Travaglia and I discussed how those figures were to be filled in.

Mr. **Chabraja**. Now——

Mr. **Watson**. Her recollection is vague on who may have mentioned the first money, but the fact of the matter is, if it's the truth, it doesn't make any difference who said it.

Mr. **Chabraja**. Mr. Watson, I do not want you to argue this case. I just want you to answer my questions.

Mr. Chairman, may I have a direction of this witness to that account.

The **Chairman**. Will you respond to the questions, Mr. Watson.

Mr. **Chabraja**. Mr. Watson, in 1981, or 1982, while you were filling out the 1981 return, you do not have Charlotte Travaglia there any more, do you?

Mr. **Watson**. No, sir.

Mr. **Chabraja**. And Peggy Kotecki did not just dream up this schedule D all by herself, did——

Mr. **Watson**. No, sir. She didn't.

Mr. **Chabraja**. She had to get a healthy dose of guidance from you, did she not?

Mr. **Watson**. She received—we had a discussion. Healthy dose, I don't know about.

Mr. **Chabraja**. You had a discussion in which you instructed her on the method employed in filling out schedule D?

Mr. **Watson**. Instructions and information are two different things. I informed her as to how it had been previously handled.

Mr. **Chabraja**. Mr. Watson, were you in charge of this firm, or were the people who worked for you in charge of it?

Mr. **Watson**. Sometimes I wonder.

Mr. **Chabraja**. I do, too. Let me ask you another question. I think you said that you did three returns: the 1980, 1981, and 1982?

Mr. WATSON. That's the best of my recollection.

Mr. CHABRAJA. Did you do the same thing in 1982? Did you write off more income?

Mr. CHABRAJA. As far as I know, the same procedure was carried forward on the 1982 return because we didn't know we'd made a mistake at that time.

Mr. CHABRAJA. OK. No further questions, Mr. Chairman.

The CHAIRMAN. Senator Rudman.

Senator RUDMAN. Mr. Chairman, I do not have any questions for the witness, but as soon as this witness has finished testifying, I want to just make a brief statement to the panel.

The CHAIRMAN. Any further questions from the committee to Mr. Watson?

Senator WARNER. Question.

The CHAIRMAN. Senator Warner.

Senator WARNER. Did there come a time that you amended this return?

Mr. WATSON. I believe we did.

Senator WARNER. And can you advise us as to why and how it was amended?

Mr. WATSON. My best recollection is, is that there was an amendment filed, and I believe there was an increase from that $40,000 that has been determined to have been inappropriately used, that some knowledge became available about an additional $3,000. So the $40,000, the best of my recollection, was increased to $43,000 and some odd dollars. I cannot remember the exact amount.

Senator WARNER. Now at any time, did the Internal Revenue Service question the 1981 return?

Mr. WATSON. Not to my knowledge.

Senator WARNER. The 1982 return?

Mr. WATSON. Not to my knowledge.

Senator WARNER. What is the normal time within which they would question a return, should there be something, in their judgment, which is in error?

Mr. WATSON. My experience has been that they are going to usually question it within a short period of time. I would say 5 or 6 months after you file a return, if there is something wrong with it, you are going to get the letter.

However, that time period, to my knowledge, can extend as long as 3 years.

Senator WARNER. Yes. Under the statute of limitations.

Mr. WATSON. Yes, sir.

Senator WARNER. Now did the judge receive a refund under the 1981 return?

Mr. WATSON. I'm sure he did. I believe the——

Senator WARNER. Well, refer to the document. It appears to me that he did. Or at least he was entitled to it under the——

Mr. WATSON. Yes, sir.

Senator WARNER [continuing]. Return, as filed.

Mr. WATSON. He—this return indicates that he would have received an $18,172.05 refund.

Senator WARNER. Do you recall whether or not he received a refund under the 1982 return?

Mr. **Watson**. I don't, I don't recall discussing it with him, but my assumption would have been he did.

Senator **Warner**. Fine. No further questions.

The **Chairman**. Senator Pressler.

Senator **Pressler**. Mr. Chairman, I have just a brief question. So, the bottom line of your testimony is that a genuine mistake was made in your office which resulted, and Judge Claiborne did not catch it, and this resulted in his being convicted, going to jail, and being before us today. Would that be a true statement?

Mr. **Watson**. That is my opinion, Senator Pressler.

Senator **Pressler**. Thank you.

The **Chairman**. Senator Heflin.

Senator **Heflin**. I recall somewhere or another in the testimony, that pertaining to some type of evaluation of the law practice, that you had a conversation with an attorney named Manzone. Is that his correct—is that the way it is pronounced?

Mr. **Watson**. Manzone.

Senator **Heflin**. Manzone. Mr. Manzone. Who was Mr. Manzone?

Mr. **Watson**. Mr. Manzone is an attorney in Las Vegas who has practiced there for, ever since I've lived in the community, and I think several years.

Senator **Heflin**. Well, did he have some relationship with Judge Claiborne?

Mr. **Watson**. It was my understanding that he had negotiated the purchase of Judge Claiborne's law practice, and had made some serious overtures toward purchasing it and expanding into—I can't remember. It seemed to me like he had a relative that was going to come into the business, and they felt they could benefit from purchasing it. The purchase fell through.

Senator **Heflin**. Did you have a conversation with Mr. Manzone?

Mr. **Watson**. I talked to him on the telephone.

Senator **Heflin**. Now when was this, that you had this conversation over the telephone with him?

Mr. **Watson**. I can't recall specifically. What I would probably say is, that—Senator, I just, I just can't recall when that conversation would have been.

Senator **Heflin**. Would it have been at the time that you were formulating—you and Ms. Travaglia were formulating this concept?

Mr. **Watson**. It could have been either time. It could have been any time from April or May 1981 until March 1983. That particular incident and conversation I just don't remember.

I had any number of conversations with Mr. Manzone over the last several years.

Senator **Heflin**. Well, how did you find out that Mr. Manzone was interested in purchasing the law practice of Harry Claiborne?

Mr. **Watson**. I believe Judge Claiborne told me that, and—and Attorney Manzone's firm also used PVI Tax Control to prepare their tax returns. And as I told you, I had six or—more than one meeting with him discussing other clients' problems over a long period of time.

My recollection is that Judge Claiborne is the one who mentioned the discussion and the amount.

Senator HEFLIN. Now what was the amount that Mr. Manzone recited to you, was discussed?

Mr. WATSON. I can't recall who specifically recited it, but the figure I recall is $750,000.

Senator HEFLIN. Now if you talked to him at the time that—Mr. Manzone—at the time that you were originally working up the concept and discussing it with Ms. Travaglia, then, at that time, you, according to your recollection, then Judge Claiborne had indicated to you that that would give you some idea of the value of the loss that he had suffered, would it not?

Mr. WATSON. That would have influenced my value judgment.

Senator HEFLIN. Then he knew, at that time, somewhat of the concept—if that was the time you talked to him—that you were going to employ, relative to the handling of it on a schedule D?

Mr. WATSON. The information that I believe he had is that I was considering what he had been offered as one of the steps in valuing the practice. Beyond that, I don't believe Judge Claiborne had any particular knowledge.

Senator HEFLIN. Well, did he also during that time tell you that he had had some discussions of the value of the law practice with some other attorneys?

Mr. WATSON. Yes, sir. He did.

Senator HEFLIN. Who were they?

Mr. WATSON. Well, let me clarify that. If I'm not mistaken, I think I might have mentioned that to him. The other attorney that I had some knowledge of, know the validity of, which I do not know, but at least I had knowledge of it, was Mrs. Annette Quintana.

Senator HEFLIN. Well, was Mrs. Quintana a former associate when he was in the private practice?

Mr. WATSON. Yes, sir. That's the same Mrs. Quintana that I believe testified before this panel.

Senator HEFLIN. Was Jim Brown also an associate in the practice prior to that, too?

Mr. WATSON. He was, he was an associate, but I've never spoken to Mr. Jim Brown.

Senator HEFLIN. But you did talk to Mrs. Quintana?

Mr. WATSON. Yes. I did.

Senator HEFLIN. And you discussed with her the value of that law practice as they calculated it pertaining to negotiations, or purchase?

Mr. WATSON. No, sir. It was not an indepth conversation with Mrs. Quintana as to how they arrived at what they negotiated. As a matter of fact, I believe, that after I mentioned it to Judge Claiborne, he's the one that confirmed the figure, without making me privy to how they had arrived at it.

Senator HEFLIN. That is all.

Senator RUDMAN. When the witness is dismissed, and after he is dismissed, I would like to make a statement.

Senator PRYOR. I guess I would ask a question or two, Mr. Chairman.

The CHAIRMAN. Senator Pryor.

Senator PRYOR. Before you met Judge Claiborne, before his former wife, or then wife brought Judge Claiborne into your office, Mr. Watson, were you at that time—did you sense that you were in any trouble with the IRS, or even the FBI, not related to the Claiborne matter?

I mean, were there previous matters that would have rendered you to be vulnerable with the IRS or the FBI?

Mr. WATSON. I can't think of anything specifically. I—and of course I can't evaluate what you mean by trouble. What some people perceive as trouble, others don't, and I have had an ongoing involvement in the business community since I've been in Las Vegas.

Senator PRYOR. Yes, sir. But was there any threat, or any sense that you might be prosecuted for any reason? Fraud or conspiracy, or helping some client to defraud the Government?

Mr. WATSON. No, sir. I have never seriously considered someone prosecuting me until those grand jury investigations started, and particularly when I began to sense that I was a target of the grand jury.

Senator PRYOR. Well, there is a, it seems to be—because of the testimony of either Mr. Wright, or Mrs. Wright—there seems to have developed here in the last 2 or 3 years, sort of a chummy relationship with the Wrights and the FBI. They testified the—or the IRS. Excuse me.

They testified the other night they ate at a restaurant here in Washington, that they did not discuss the case pending, which is awful hard to imagine.

Then we find that your secretary's daughter works for Mr. Yablonsky of the Federal strike force. Is that correct?

Mr. WATSON. At, at the time Mrs. Farrell was employed by me, her daughter was an employee in Joseph Yablonsky's office. I don't know which department she was in, but she was employed there.

Senator PRYOR. Was that at the same time that Judge Claiborne came into your office?

Mr. WATSON. No, sir. Judge Claiborne came in, in 1981, and it's my recollection Mrs. Farrell was working for me in 1983.

Senator PRYOR. I see. I think, Mr. Chairman, that is all for the moment.

The CHAIRMAN. Thank you very much, Mr. Watson.

You have some questions?

Mr. CHABRAJA. I would like to beg the Chair's indulgence. I have one question, or a series of questions with respect to one document that I neglected to deal with. I will show the document on my way up to Mr. Goodman.

FURTHER CROSS-EXAMINATION

Mr. Watson, while Mr. Goodman is looking at the document that I want to show you, I remember from your testimony that you, I think in response to examination by Mr. Goodman, you identified the fact that you are running for public office in Las Vegas?

Mr. WATSON. I did run for public office but I lost in the primary.

Mr. CHABRAJA. OK. And you, in connection with running for that office, the committee to elect you issued certain campaign literature?

Mr. WATSON. Yes. They did.

Mr. **CHABRAJA**. Before issuing that literature, I take it you read it and approved it?

Mr. **WATSON**. No, sir.

Mr. **CHABRAJA**. You did not?

Mr. **WATSON**. No, sir. I did not read and approve every aspect of my campaign——

Mr. **CHABRAJA**. Are you aware of it? You are aware of your campaign literature?

Mr. **WATSON**. I think I am.

Mr. **CHABRAJA**. OK.

Senator **HEFLIN**. Might I ask him a question while we wait?

The **CHAIRMAN**. One question, Senator Heflin.

Senator **HEFLIN**. What was the name of the Republican opponent that defeated you?

Mr. **WATSON**. The opposition to the Democratic Party in that race was championed only by a Libertarian.

Mr. **CHABRAJA**. Mr. Watson, I am going to hand you a document we have marked House Managers exhibit 43, which appears to be a mailing of some five or six pages.

And I ask you if that is campaign literature that you had distributed on your behalf?

Mr. **WATSON**. That looks familiar to me.

Mr. **CHABRAJA**. And as a matter of fact it bears your signature, does it not, on the last page? And you signed off on that?

Mr. **WATSON**. Yes. It does. A couple of places.

Mr. **CHABRAJA**. All right. Let me direct your attention to the second page, or the page right after the cover page, and is there not a column on the far righthand side entitled "Recent Advocacy Activities"?

Mr. **WATSON**. Yes, sir. There is.

Mr. **CHABRAJA**. What do you mean by advocacy? You mean those matters where you have championed someone's cause?

Mr. **WATSON**. I have two ladies that work with me on various projects——

Mr. **CHABRAJA**. What do you mean?

Mr. **WATSON**. I don't even know what the—I think advocacy has something to do with the law.

Mr. **CHABRAJA**. With the law? You are not holding yourself out as a lawyer there? You mean you just championed someone's case?

Mr. **WATSON**. Is that what it means, champion——

Mr. **CHABRAJA**. Well, I do not know. I am trying to help you a little bit, Mr. Watson.

Mr. **WATSON**. It looked impressive.

Mr. **CHABRAJA**. It did. All right.

Now, in connection with that very impressive word—and I like to think it is impressive—you list some advocacy activities there, and I want you to read for the gentlemen of this panel, and make a part of this record for the entire Senate, what you have listed there as your first item of advocacy.

Mr. **WATSON**. "1983-84. Resisted FBI, Justice Department, and IRS"—let's see. I can't quite make it out.

Mr. **CHABRAJA**. Let me see if I can help. I will read it and then——

Mr. **WATSON**. You read it and I will verify it.

Mr. CHABRAJA. OK. "1983-84. Resisted FBI, Justice Department, and IRS through three grand juries, two Federal court trials, in their efforts to convict a public official."

Mr. WATSON. That is correct.

Mr. CHABRAJA. Is that a fair reading of that?

Mr. WATSON. That is correct.

Mr. CHABRAJA. Are we talking about the same public official? Is this Judge Harry E. Claiborne?

Mr. WATSON. Yes. There was one other public official that I had a minor involvement in, with, that was convicted.

Mr. CHABRAJA. But you are referring here to the Claiborne case?

Mr. WATSON. Well, I am making reference here to any activity that I was involved in, that resisted the efforts of those named in the prosecution and conviction of innocent people.

Mr. CHABRAJA. OK. And so you are here today, even, in an advocacy role, are you not? You are resisting any efforts to suggest that Judge Harry E. Claiborne did anything wrong?

Mr. WATSON. I'm here to testify, under oath, to the questions that you asked me, and answer those questions to the best of my recollection and ability.

Mr. CHABRAJA. Now do you want to tell me you are an unbiased witness, Mr. Watson, after you have bragged about——

Mr. WATSON. You have—sir, you have had an opportunity, this panel has had——

Mr. CHABRAJA. No, no. I want you to answer my questions. I am fully aware of the opportunities that I have had. I want you to tell me, while you are looking at me, and while you are looking at this panel, that you are an unbiased witness.

Mr. WATSON. You could perceive from my conduct, and comments, that I am a biased witness.

Mr. CHABRAJA. Thank you.

Mr. WATSON. I believe that you could perceive that.

Mr. CHABRAJA. Thank you, Mr. Chairman.

Mr. Chairman, during the course of my examination, I marked three exhibits and had them identified, 40 through 42, and this is House managers exhibit 43, which Mr. Watson has now authenticated, and I move the admission of all of those exhibits into evidence.

Mr. GOODMAN. No objection.

The CHAIRMAN. They will be admitted.

Senator DECONCINI. I would like to see that one when the Clerk gets finished.

(Whereupon, House managers exhibit No's 40, 41, 42, and 43 were received in evidence.)

The CHAIRMAN. Anything further, Mr. Goodman?

Mr. GOODMAN. Yes. Just in response to the last line of questioning by Mr. Chabraja, Mr. Chairman.

FURTHER CROSS-EXAMINATION

Mr. GOODMAN. Mr. Watson, you are biased, correct? Yes or no?

Mr. WATSON. Yes. I am.

Mr. GOODMAN. You are biased against the Government agencies who intimidated you, are you not?

Mr. WATSON. Yes. I am.

Mr. GOODMAN. You are biased against the FBI and the IRS for the way they treated you, are you not?

Mr. WATSON. Yes. I am.

Mr. GOODMAN. That they made your life into a nightmare, did they not?

Mr. WATSON. I believe that they had caused me considerable discomfort and cost me a considerable amount of business.

Mr. GOODMAN. Thank you.

The CHAIRMAN. Thank you, Mr. Watson. You may step down.

Mr. WATSON. Am I excused, or will I be recalled, or, do you know?

The CHAIRMAN. No. You are not excused yet.

Mr. WATSON. Thank you, sir.

Senator RUDMAN. Mr. Chairman.

The CHAIRMAN. Senator Rudman wishes to make a statement.

Senator RUDMAN. Mr. Chairman, although we are sitting here as a panel to advise the Senate on the impeachment of a Federal judge, we also sit here in our individual capacities as Members of the U.S. Senate with other responsibilities, and I think that this is a good point for me to just make several observations, which do not relate to Judge Claiborne's guilt or innocence.

No. 1, Mr. Chairman, I would hope that the committee would expeditiously forward this last witness's testimony to the U.S. Department of Justice for its inquiry. Let them decide whatever they want to decide.

The second point I want to make is that we have sitting on the panel Senator Pryor, from Arkansas, a member of the Senate Finance Committee.

I would hope that appropriate parts of Mr. Watson's testimony are examined by the Finance Committee's staff, in light of who in this country are allowed by law and regulation to prepare Federal tax returns other than taxpayers.

Because aside from whether Judge Claiborne had knowledge of the scheme, or not, that is a whole separate issue. Anyone sitting through this trial has seen an active effort to defraud the taxpayers of this country, certainly by this alleged accountant.

And the third comment I want to make—and I will do this myself—I intend to write to the Internal Revenue Office in Nevada, and suggest that they start forthwith an audit of any return that Mr. Watson has prepared, because I frankly think that we have seen here a pattern of the most egregious fraud on taxpayers, aside from whether Judge Claiborne has any knowledge of them. A separate question.

This witness that has been before this panel today, and yesterday, in my many years of trying cases, has to be the most incredible witness that I have ever seen, particularly before a hearing conducted before the United States Senate.

Senator DECONCINI. Mr. Chairman.

The CHAIRMAN. Senator DeConcini.

Senator DECONCINI. Mr. Chairman, I would like to suggest, and the resolution does not have to be now, and if the committee elects not to do it—I would suggest that we ask the Internal Revenue to give us an analysis of what they believe the procedures are as to the tax returns of 1979 and 1980 are. Not from the Las Vegas area. But I would like to see an analysis of expert tax people from the Government side, to see how egregious and outrageous their observations are of such returns. That would be helpful to me.

Second, I join my friend from New Hampshire in his observation, and condemnation of this witness. But I must say that this witness is not on trial here.

Our purpose is not to resolve his guilt or innocence, or his incompetence. I think that is clear. We have another charge here and I think it is important that we keep focus on the charge that is before us, and who is really here before us.

The **Chairman**. Well, with that——

Senator **Heflin**. Mr. Chairman, I would join, but rather than having Internal Revenue, I would somehow or another like to—there may be some feeling of comradeship, or some sort of feeling within the Internal Revenue Service itself.

I would rather have somebody that is a disinterested person, and maybe in the meantime, while we are having the transcript published—if it could be done and we would study it—somebody, say, from the Association of Certified Public Accountants, or some tax authority, who is disinterested, entirely, to evaluate these returns, and the circumstance, and to give us an opinion relative to that.

Senator **DeConcini**. Mr. Chairman, I concur with the Senator from Alabama. I think that is probably a better way to go about it.

I would just like to seek somebody on the professional side to evaluate it. I would do it either myself, or, if the committee elects to do it, just to see what they observe from this.

It is obvious to me, but I would like to see a pro look at it and give me——

The **Chairman**. I will consult counsel whether that is within the limits of our charter, and we can discuss that at the next conference that we have.

Senator **Gore**. Mr. Chairman.

The **Chairman**. Yes?

Senator **Gore**. Mr. Chairman, very briefly, I would like to concur with the other suggestion made by the Senator from New Hampshire, that we forward the transcript of the last witness's testimony to the Justice Department.

I agree with the Senator from Arizona, that we must focus on the matter at hand, as we will shortly do. But insofar as these proceedings have been carried on C—SPAN, and the like, I think it is important that we not, in this precedential proceeding, just sit cavalierly at the table while a witness comes, and takes the kind of attitude toward truthful testimony, in my view, that we have just seen.

And I think that people should be advised that there are penalties for perjury in testimony given before the U.S. Congress.

So I would also concur with the recommendation that we forward that, even as we proceed with the matter at hand.

The **Chairman**. I will now ask Judge Claiborne to return to the stand.

Judge Claiborne, you understand the oath you have previously taken is still binding upon you?

Judge CLAIBORNE. I do.

The CHAIRMAN. The members of the committee will now address questions to Judge Claiborne. We will rotate questions at intervals of not longer than 10 minutes each.

EXAMINATION BY THE COMMITTEE

The CHAIRMAN. Judge Claiborne, I have just one question for you. In the House managers exhibit No. 27, which is your 1980 tax return—and I will ask the clerk to lay it before you—there is a form 2119, which we have discussed at great length in these proceedings; 2119 is a handwritten form, a form filled in by hand, and your name appears at the top of the page.

Judge CLAIBORNE. Yes, sir.

The CHAIRMAN. Did you write that?

Judge CLAIBORNE. Is that my writing?

The CHAIRMAN. Yes.

Judge CLAIBORNE. No, sir.

The CHAIRMAN. You did not write it?

Judge CLAIBORNE. No, sir. The only place on this document that my handwriting appears is the signature.

The CHAIRMAN. Senator Sarbanes.

The VICE CHAIRMAN. Judge Claiborne, I would like you to look at the House exhibit 32, if the clerk would provide it to you.

Judge CLAIBORNE. Yes, sir.

The VICE CHAIRMAN. Is that your application for an automatic extension of time to file your individual income tax return for 1980?

Judge CLAIBORNE. Yes, sir.

The VICE CHAIRMAN. Was it in fact your habit to file extensions to pay your income tax returns?

Judge CLAIBORNE. My habit?

The VICE CHAIRMAN. Yes.

Judge CLAIBORNE. Generally it arises in this way: I'm—have always been rather busy, and it generally arises by my accountant calling me, and saying to me that time is getting near, and we can't get to it, so we'll have to get an extension.

And I go to his office, and sign the extension.

The VICE CHAIRMAN. Now how did you come to sign this extension in 1980? Do you recall that?

Judge CLAIBORNE. I recall the signing of it. It was signed in Mr. Watson's office, I am quite sure.

The VICE CHAIRMAN. Was it completed by—who filled this form in?

Judge CLAIBORNE. Well, my accountant has always filled it in. The only extension that I ever signed, that I ever prepared myself—and I did that with assistance—was during the trial of the matter in which I was convicted of. I filed for an extension, and I did that in Reno because I had, could not get back to town.

The VICE CHAIRMAN. Now at the time that you signed this form, according to your testimony, in Mr. Watson's office, had the figures been filled in?

Judge CLAIBORNE. I'm, I'm quite certain they were, sir.

The VICE CHAIRMAN. And you looked at them, I assume?

Judge **Claiborne**. Today, I have no recollection of looking at them, but I must have because he asked me for a check and I wrote a check at the same time.

The **Vice Chairman**. Yes. At that time you wrote a check, did you not, for the balance due of $20,817.59? Is that correct?

Judge **Claiborne**. That is correct.

The **Vice Chairman**. That is the figure on line 6 of the return, of this application for——

Judge **Claiborne**. That is correct.

The **Vice Chairman**. So it is your testimony, now, that you must have looked at these figures? This form must have been filled in. You must have——

Judge **Claiborne**. Oh, I'm sure it was because otherwise, I know—I'm quite certain, sir, that the application for extension was signed at the same time that the check was written, and it was given to Mr. Watson at that time.

The **Vice Chairman**. What does this application for automatic extension of time which you signed indicate, in line 1, as the total income tax you expected to owe for 1980?

Judge **Claiborne**. The amount?

The **Vice Chairman**. Yes, sir.

Judge **Claiborne**. Here? $42,847.96.

The **Vice Chairman**. And it indicates in line 5, that you had paid, up to that point, $22,030.37, is that correct?

Judge **Claiborne**. That's correct.

The **Vice Chairman**. Leaving an income tax balance due of $20,817.59?

Judge **Claiborne**. That is correct.

The **Vice Chairman**. And it is for that amount that you wrote a check, at that time, to the Internal Revenue Service, is that correct?

Judge **Claiborne**. That is right.

The **Vice Chairman**. And did you then give that check, leave that check and the signed form with Mr. Watson to mail in?

Judge **Claiborne**. Yes.

The **Vice Chairman**. Thank you.

The **Chairman**. Mr. Hatch.

Senator **Hatch**. Judge, I suppose some of the questions that really are on people's minds are that as you reviewed these returns you should have known of the defects.

Judge **Claiborne**. I should have known?

Senator **Hatch**. In those returns, yes.

Let's start with the 1979 return, that there was an underreporting in the 1979 return. Do you feel you covered that by sending a letter to Mr. Wright, that he claims he did not receive?

Judge **Claiborne**. Well, I'm not sure I understand, or comprehend your question, Senator Hatch.

Senator **Hatch**. You were convicted for income tax fraud with regard——

Judge **Claiborne**. Yes, making a false statement.

Senator **Hatch** [continuing]. To the 1979 return.

Judge **Claiborne**. False statement on the return.

Senator **Hatch**. What was wrong with the 1979 return, as you look at it in retrospect?

Judge CLAIBORNE. What was wrong with it?

Senator HATCH. Yes.

Judge CLAIBORNE. That I failed to include in the income on the return the amount of $20,000 of income that I had received from private practice.

Senator HATCH. Now should you have known about that? That is going to be one of the arguments. Why did you not know about that? When you signed the return in blank, you say, but why did you not check that out when you finally got the return, and your own copy?

Judge CLAIBORNE. I am—I have absolutely no reason for telling you that—why I did not do it. I had a practice of not reviewing my returns. I think a—I said the other day, that Mr. Wright and I became careless with each other, I think, over years of association. And that I can never remember, and he admits that fact here, reviewing a return after I received it, I do not remember, in all of the years that I was in business, or going back and reviewing what may be three or four returns after I received them.

Maybe dangerous. I don't know. But I mean it was a characteristic habit, and it was formed by me over the years, and that's the reason why.

Senator HATCH. I suspect a lot of attorneys, especially trial attorneys, use the same habit, and perhaps even U.S. Senators.

But you relied on Mr. Wright, is what you are saying, and you felt you——

Judge CLAIBORNE. I would have bet my life on Jay Wright.

Senator HATCH. And you felt you gave him the information necessary to fill in——

Judge CLAIBORNE. I know I did.

Senator HATCH. All right.

Judge CLAIBORNE. That's one thing I know I did.

Senator HATCH. Let's go to the 1980 return.

Now you sold a home for $750,000 with a basis, all-accumulated basis of somewhere around $360,000?

Judge CLAIBORNE. That's correct.

Senator HATCH. So in your own mind—you testified yesterday—that you knew that you would have a capital gains tax liability?

Judge CLAIBORNE. Yes. I——

Senator HATCH. You expected to have a capital gains tax liability?

Judge CLAIBORNE. Yes. I did. And I particularly knew it because when the extension was filled out, I saw there that I would owe approximately about $40,000 in taxes.

Senator HATCH. And when you realized you were getting back over $40,000, did that not trigger your mind to go back, and wonder why you did not have a tax liability because of the huge capital gains that you had made?

Judge CLAIBORNE. Well, when I received the refund——

Senator HATCH. Right.

Judge CLAIBORNE. These are two different things that I'm talking about.

Senator HATCH. Go ahead.

Judge CLAIBORNE. When I signed the extension, I saw that the tax that I owed was some $40,000.

Senator HATCH. Right.

Judge CLAIBORNE. So I knew, or thought at that time, that I was going to have a tax liability of $40,000. And I had paid some $20,000. And so I wrote a check for the balance.

When I received my return from Mr. Watson on the 18th, I believe it was, or 19th—probably 19th—and he brought his bill and I paid him, and we went through the return very casually. But I did see that I was entitled to a refund of some $20,000. And I looked right at him and I said, "How did you accomplish this?" And I read out the refund, whatever it is on the, on the return. And he said, "We were able to take your losses from when you lost your business, when you went on the bench." I don't think——

Senator HATCH. Did that not trigger in you some understanding that if you do not sell a business and receive a benefit from it, it is difficult to take a loss from it in the case of a law practice?

Judge CLAIBORNE. No, sir. It did not. What it did trigger, Senator Hatch, was whether or not in 1980, I could take a loss in 1978. A 1978 loss on the 1980 return.

Senator HATCH. In 1980.

Judge CLAIBORNE. And I said, I did say to him—I said, "Can I take a 1978 loss in 1980?" And he said, "Yes, you can." And then he went into quite of a—as I think I testified here before—as a rather authoritative explanation, which allowed me to do that.

The bottom line was that you can take a loss at any reasonable time. You didn't necessarily have to take it in the tax year.

Nothing, at that time, triggered my mind as to whether or not the capital loss was correctly established.

Senator HATCH. So basically what you seem to be saying is that you had relied on him to prepare the returns. He had prepared them. You had a refund that was exceptional but he claimed that he was able to get you that refund because of the loss you took back in 1978 at the conclusion of your law practice?

Judge CLAIBORNE. That is correct.

Senator HATCH. And you just assumed he was right as a tax advisor?

Judge CLAIBORNE. I immediately assumed that he was correct because when he first—when I first saw it, and I first questioned him, the thing that was—that struck me, was, in other words, how can I take a 1978 loss on my 1980 return. And that's what I asked him.

Senator HATCH. So in essence you had a $750,000 capital gain minus the basis and the property, and you knew that you should have some capital gains, but you assumed that those had been wiped out—the capital gains exposure was wiped out by the losses that he said occurred in 1978, when you discontinued your law practice?

Judge CLAIBORNE. Yes. That's exactly right.

Senator HATCH. I see. Now did you look for the $88,500 in legal fees anywhere in that return at the time?

Judge CLAIBORNE. I really, I really don't know whether I did, or not. I know that I had, and as I've testified to, an impression that something was wrong with—I knew that there was a schedule D. And I had an impression in my mind that something was wrong with it. I don't know.

Senator **Hatch**. Did you check that out with anybody?

Judge **Claiborne**. Eventually I did. Eventually I did.

Senator **Hatch**. That was after you——

Judge **Claiborne**. After, that the matter was before the Reno grand jury and Mr. Wright had come back—I mean, Mr. Watson had come back and advised me of his testimony——

Senator **Hatch**. But you did not check it out before that?

Judge **Claiborne**. No. I did not.

Senator **Hatch**. Any reason why you did not?

Judge **Claiborne**. I had no reason to.

Senator **Hatch**. Well, you had the inner feeling that something might be wrong?

Judge **Claiborne**. I didn't have an inner feeling, but, looking back, I had an impression that something was wrong. In other words, an impression that, I think I'd better look at that when I get time.

Senator **Hatch**. And you put it off?

Judge **Claiborne**. And I put it off out of, out of necessity. I mean, we had an unbelievable horrendous calendar in the Federal courts of Nevada during this period of time, and still have. It still continues to build.

And my—I became the Chief Judge in, I believe it was May 1980, and I was carrying my full calendar, and, I didn't have time to breathe. And I'm no different than any other Federal judge. I don't know of a single Federal judge that isn't working himself to death, and that is the truth.

I know to the extent that—I have a lot of vitality for my age because my, my outside activities are in the area of backpacking and mountain climbing, and fishing and hunting. And so I'm out in the wilderness a lot and I stay in pretty good shape.

Despite that, by Friday night, I was completely mentally and physically wiped out, where, I used to on Saturday mornings, get up and I'd head for a stream in your country, and my favorite fishing spot is the Pinewich Lake, and I used to head for it early Saturday mornings.

It got where that I was really too exhausted on Saturday mornings, and Saturdays, to enjoy the things that I used to do.

And I'm no different, as I said, than any other Federal judge. And I think the long hours, and the much we had to do, just didn't leave you any time for your personal affairs.

And I had neglected my personal affairs terribly, to the extent that luncheons I would miss. I would get absorbed. I'd make luncheon dates with people and I would miss them because something would come up at the last minute, and I would go into the library, and I'd begin to personally research it or personally check it out. And pretty soon the phone would be ringing. It would be whoever I was to meet, saying, "Are you coming or not?"

Senator **Hatch**. I understand. My time is up, Judge. Thank you, Mr. Chairman.

The **Chairman**. Thank you.

Senator Heflin.

Senator **Heflin**. Judge Claiborne, in the exhibits that were introduced in your behalf is exhibit 11—which if you will show him, clerk—which is an amended U.S. individual tax return for the year

1979, which is dated on March 11, 1983, which I would assume that under the figures, there was an effort to correct the issue of whether it was some $40,000 as opposed to $20,000 of law firm fees, law fees, that you received after you left the practice in that year.

It also has the name of a tax preparer by the name of "R. Paul Sorenson" as the preparer.

Who is Mr. Sorenson?

Judge CLAIBORNE. Mr. Sorenson is a Las Vegas tax specialist. He is an attorney, and a very fine one.

Senator HEFLIN. All right. So now, this was filed on March 11, 1983. Would you explain the circumstances surrounding it and filing it and in relationship to any knowledge that the IRS or the grand jury or the FBI was seeking to indict you or to give you problems pertaining to your income tax return for 1979?

Judge CLAIBORNE. At the time this amended return was made, there at least was no official investigation of me on income taxes.

Would you like—does your question embrace how did it come about that we——

Senator HEFLIN. Yes, sir; if you will.

Judge CLAIBORNE. Very well. I began to have a number of communications with the Ethics Committee, the Judicial Ethics Committee at that time chaired by Judge Tamm. And——

Senator HEFLIN. Judge Hamm?

Judge CLAIBORNE. Tamm, T-a-m-m.

Senator HEFLIN. All right.

Judge CLAIBORNE. And somewhere in the course of study of our reports, disclosure reports, we discovered that a disclosure report for 1979 was in error, and that we had placed in our disclosure report the same amount of money as we had—or, within a few hundred dollars—as was on the 1979 income tax return. And when I became aware of it—of this error—well, then, I took my 1979 return over to Mr. Sorenson, and I told him that I should amend my—I don't know whether I told him or he told me—I think I suggested that we'd better amend my return. It was amended.

Senator HEFLIN. All right, sir. Now, when was the Portland grand jury meeting in 1983?

Judge CLAIBORNE. I am trying to remember. There were four grand juries involving me. The first was in Las Vegas in the spring—well, the year of 1980—and that was referred to as the LaRue-Claiborne grand jury action. Then, they started a grand jury in Portland, OR. My matter was before two grand juries in Portland, OR, over a period of some year and a half. And then they transferred the grand jury activity down to Reno, NV, in 1983, in the summer of 1983, and that grand jury indicted me.

I don't know whether I can accurately answer your question, save and except I believe that it was late 1982, the first Portland grand jury, or the early part of 1983.

Senator HEFLIN. Will you give us, then, the date that you first learned that the Internal Revenue Service or a grand jury or the FBI was investigating your taxes?

Judge CLAIBORNE. I think that would have been—the first time that I was aware of that would have been sometime in maybe in July or August of 1970—I mean, 1983.

Senator HEFLIN. In other words, you are telling us you filed this amended tax return before you found out that the Internal Revenue, grand jury, or FBI was investigating your taxes?

Judge CLAIBORNE. I knew that—well, at least, I knew at the time this return was filed, because that is one of the things that Mr. Sorenson said. He said, "You cannot file a return if you are—an amended return—if the basic return is under audit." And he said, "Are you under audit?"

And I said, "No." And I said, "No one has ever talked to me from the IRS about my return No one has ever advised me there's anything wrong with it."

And then, I talked the matter over with Mr. Goodman, whether or not they were investigating me for income tax, and from our conversation, we concluded that they were not. And I believe he said to me that, "The Government is conceding"—or, "stating"—"that they are not investigating you for taxes."

Senator HEFLIN. Did you file an amended return for the 1980 return?

Judge CLAIBORNE. No, sir. We never have.

Senator HEFLIN. Did you have Mr. Sorenson, when he looked at the 1979 return, to look at the 1980 return as to whether to file an amended return?

Judge CLAIBORNE. No, sir.

Senator HEFLIN. Did you file an amended return for the 1981 return?

Judge CLAIBORNE. Yes, sir; yes, sir.

Senator HEFLIN. You have filed one for the 1981.

Judge CLAIBORNE. Oh, yes.

Senator HEFLIN. An amended return after you filed the 1981.

Judge CLAIBORNE. We filed—sometime after the first trial, I believe, we filed an amended return and paid the tax on the deducted amount that Mr. Watson had—the loss that he had carried forward and deducted from my gross income.

Senator HEFLIN. Have any civil penalties been applied by the Government, IRS, relative to your 1979, 1980, 1981, 1982 return, and if so, what were those penalties?

Judge CLAIBORNE. When we amended the 1979 return, there was an interest penalty, and I am not sure I know now how much. But there was an interest penalty, and it was paid. And also on the 1981 return when it was amended, there was also an interest penalty, and we paid that.

Senator HEFLIN. But nothing other than interest penalties?

Judge CLAIBORNE. Oh, no.

Senator HEFLIN. No fraud, no negligence?

Judge CLAIBORNE. No. But I have received—we did receive, then, a short time before I went to prison, we received notice from the IRS that they now intended to exact fraud penalties on the 1979 return and the 1980 return, notwithstanding the fact that the 1979 return was amended and the tax paid before I was ever indicted.

The CHAIRMAN. Your time has expired.

Senator Warner.

Senator WARNER. Thank you, Mr. Chairman.

Judge, by a curious circumstance, it seems to me the law which guides our responsibility is recited in the case *United States* v. *Con-*

forte, which was a case that you appeared, apparently, on the briefs and at some point may have had something to do, by virtue of your appearance on the briefs.

Judge CLAIBORNE. Mr. Hawkman——

Senator WARNER. Well, anyway, let me just read the law.

Judge CLAIBORNE [continuing]. Handled that case, and I just rode sidesaddle. I just sat in the courtroom. I think the record would show in that case that I didn't ask a single question and did not participate, except I do believe that I made a closing argument for Mrs.——

Senator WARNER. You had a knowledge of it, and as you have recited here before, you are a man that does his homework. Now, this case was handed down by the U.S. Court of Appeals, Ninth Circuit, April 29, 1980, and it is cited in 624 Fed. 2d. And there is a section here under "Willfulness." And this is in connection with tax returns.

"Willfulness requires a showing of a specific wrongful intent to avoid a known legal duty." The judge goes on to recite, "Direct proof of a taxpayer's intent to evade taxes is rarely available. Willfulness may be inferred, however, by the trier of fact, from all the facts and circumstances of the attempted understatement of tax."

So it sort of, in my judgment, lays the framework for what we've got to do in sorting out this mass of conflicting testimony. And speaking only for myself, one of the facts or circumstances which will weigh heavily with me is how much tax law you know and when did you know it.

And I have gone back and read as many of your opinions as I can find through the Service which indicates unreported tax cases—there were six in 1979; there were four in 1980—and then, several reported cases.

Now let me go through some of the opinions which you yourself wrote. Now, I concede that these particular cases were not trying specifically facts such as we have here today. But in your analysis of the case and making the decision, you wrote as if you were one that had an understanding of basic corporate finance, the subject of deductions, capital gains, capital losses, income, capital accounts.

Let me just read some paragraphs from some of your opinions which were contemporaneous with the returns that we are looking at today.

This was written April 12, 1979. It is *United States of America* v. *The Desert Palace.* And I will provide for the record the further citation to save time. And you wrote:

> It would seem to me that the Internal Revenue Service would want these kinds of records in order to investigate the propriety of certain claimed deductions or failure to report "income" and would not necessarily be constrained in that regard by the rate of interest or other covenants and conditions surrounding the transaction.

Another case——

Judge CLAIBORNE. Well, I wouldn't consider that exactly earth-shattering or an exceedingly brilliant statement.

Senator WARNER. But it's not written by a dumb man.

Judge CLAIBORNE. Why, no. I've never said in my life that—I've never pled guilty to being dumb.

Senator WARNER. Well, let me continue. Let's just remind you—you are writing these for the benefit of the American public.

Judge CLAIBORNE. Yes, sir, but speaking as a judge, I'm not writing that for the benefit of an American public. I think I'm writing it primarily for the benefit of the judiciary and maybe for future guidance of lawyers.

Senator WARNER. All right, who in turn, represent the American public.

Judge CLAIBORNE. But I was a deliberate writer, sir.

Senator WARNER. All right. Let me continue. This is a case of Joyce Mindheim, decided on January 23, 1980, Claiborne, district judge. You were talking about the capitalization of a corporation, TSI.

"TSI was undercapitalized from the inception of its operation and was constantly short of operating capital." You go on into financial statements. You say: "The plaintiffs paid Federal income taxes as follows," and then recite the payment of the taxes.

In Conclusions of Law you recite:

> A taxpayer who is claiming a deduction for a bad debt loss, 26 U.S.C. 166, has the burden of demonstrating that advances made to a corporation were bonafide business loans which created a debtor-creditor relationship rather than contributions to capital, which created a corporation-shareholder relationship. The determination as to whether an advance is a bonafide business loan or a contribution to capital must turn on the individual circumstances of each case.

The third case, and perhaps I find the most interesting, *United States of America* v. *James C. Hamilton,* decided April 30, 1980, right in the timeframe that we are dealing with in the 1979 return.

Now, in this case——

Judge CLAIBORNE. Sir, I don't remember writing an opinion in the Hamilton.

Senator WARNER. I think you were the trial judge, and a Kilkenny was the circuit judge.

Judge CLAIBORNE. Oh, that's a circuit opinion.

Senator WARNER. That's correct. But you were——

Judge CLAIBORNE. I think Judge Price wrote the opinion for the circuit.

Senator WARNER. Let's see. It was before Kilkenny, Skopil, and Pregerson. The circuit judge is Kilkenny.

Judge CLAIBORNE. Oh, Pregerson.

Senator WARNER. You were the trial judge. But the circuit court, in analyzing the case that you tried, made the following observation:

> In framing the law on the subject, the Supreme Court has said that the Government, to sustain a conviction, must prove the three elements of the offense—first, existence of a tax deficiency; second, willfulness in evading taxes, and third, an affirmative act constituting an evasion or attempted evasion of the income tax.

I'd just point out that during the course of your career on the bench, at the time these returns were prepared and signed, you were actively engaged as a Federal judge in cases which had certain aspects that gave you a familiarity with the tax law, regulation, corporate business, individuals—the very subjects that we're dealing with here today.

So I come back to the question: How much tax law did you know, and when did you know it?

Judge CLAIBORNE. You come back with the question how much tax law do I know?

Senator **Warner**. And when did you know it?

Judge **Claiborne**. I think all of the tax law that I know, I acquired while I was on the bench, because I never fooled with it, at all, in my private practice. So I would say that I had picked up a little, maybe, in trials, by riding what we call side-saddle with tax lawyers. Some clients of yours have tax problems, and I always sent them to either——

Senator **Warner**. Well, let's stop with the point that you learned it while you were on the bench. Do you agree that there were about six cases in 1979 that dealt with some aspect of taxation? They are reported in the Federal Reporter System as coming under the category of dealing with some element of taxation.

Judge **Claiborne**. Well, I mean, maybe. I really don't know that, Senator, for this reason, that the other day when I looked at the list of cases, I mean, the only way tax entered into it was like the grand jury case, the *Bardier* case. The issue rose out of a grand jury that was investigating income tax, but the case had nothing to do with the point.

But there were various cases that touched on certain elements of the Internal Revenue Code.

Senator **Warner**. Well, would you say that you had a knowledge of tax law and regulation somewhat above the average American?

Judge **Claiborne**. That places me in a very difficult position. I think that any man with a college education places him, as far as the intelligence area, a little higher than the average citizen because the average citizen is not a college graduate.

I'd say this, that I think I'm better mentally able to comprehend than the average citizen would be.

Senator **Warner**. You were involved in cases that dealt with tax issues prior to and at the time which you filed these returns.

Judge **Claiborne**. Oh, yes, oh, yes. And I thought I explained it when I was testifying before, the way that I became——

Senator **Warner**. Now, we've dealt here today or, over the past week or so, with the 1979 and 1980 returns. We have discussed in part the 1981 return, which I understand has been amended, but we do not have before us the nature of that amendment. We have also touched on the 1982 return. It seems to me there is a pattern established by these four returns, and it would be beneficial—speaking for myself—if we had the 1981 and 1982 returns and any amendments thereto.

Would you be willing to provide those returns to the committee?

Judge **Claiborne**. I'd be happy to do that.

The **Chairman**. Senator Warner's time has expired.

Senator **Warner**. Could I ask just one quick question?

The **Chairman**. Yes.

Senator **Warner**. One of the puzzling things here, to me, speaking for myself, and reading through what you have done—and indeed, I think you are an able jurist—is how, if you were setting out to intentionally conspire to defraud the Government, you could have picked Watson particularly and then have signed a return which has been characterized as abominable, abyssmal, any other number of terms here. It strikes me as being just so stupid as to be beyond your ability to step that far down. If you were going to conspire with the Government, you would have picked a slightly smarter man and probably, based on what you have written in these opinions, could have figured out perhaps a more clever way——

Judge CLAIBORNE. If I had wanted to——

Senator WARNER. I am arguing in your behalf, regrettably.

Judge CLAIBORNE. I appreciate that, because I need all the help I can get.

Senator WARNER. Yes.

The CHAIRMAN. Senator DeConcini.

Senator DECONCINI. Mr. Chairman, thank you.

Judge Claiborne, I join my friend from Virginia in reviewing your cases and reputation as a judge, and indeed you are a learned jurist, in my judgment.

But I wonder, Judge Claiborne, Canon No. 2, I think, of the Judicial Code of Ethics, admonishes all Federal judges to avoid even the appearance of any impropriety.

Do you feel that you've conducted yourself in the letter and the spirit of that canon in lieu of late filings of your income tax return——

Judge CLAIBORNE. Late filings?

Senator DECONCINI [continuing]. Extensions, questionable procedures of your conduct with your business and your income, having a law practice where you have had years after on the bench, continued receipts. I'd like to have you tell me if you feel you've followed the spirit of that canon.

Judge CLAIBORNE. Well, first, I must take individually the items that you mentioned. You mentioned first late filings of my income tax. Are you talking about filing amended returns, or——

Senator DECONCINI. Extensions.

Judge CLAIBORNE [continuing]. Are you talking about getting extensions to file a return?

Senator DECONCINI. Yes, sir, extensions.

Judge CLAIBORNE. The extensions?

Senator DECONCINI. Yes.

Judge CLAIBORNE. I believe in at least 20 of the 30 years that Mr. Wright did my return that we got extensions for various reasons.

Senator DECONCINI. Those were before you were on the bench?

Judge CLAIBORNE. Yes, sir. I think that in all probability, developed a habit where he knew I would not mind, or probably would appreciate it, because I mean, I generally was in trial—I was a trial lawyer, and I was in court nearly every day—and that the circumstances were such, either because of Mr. Wright or myself, that we'd get a return—I mean, an extension. Either it was convenient to do so, or there was a necessity.

I've forgotten the second point that you——

Senator DECONCINI. Well, some of the items that were listed on your income tax return which, of course, your defense is that you didn't know that they were there—the sloppiness of it, the inaccuracies of it, the——

Judge CLAIBORNE. Are you talking about the return itself?

Senator DECONCINI. Yes.

Judge CLAIBORNE. Well, I don't think there is anything really sloppy about the manner in which I furnished information to my tax preparers.

Senator DeConcini. What about your obligation to know what's in it when you file it and sign it and send it in as the Government official, to have some idea what's in it, rather than just throwing it in there, "because here I am, a judge," perhaps, you know, "If they want to look at it, fine." You don't feel an obligation under the canons to be more precise?

Judge Claiborne. I would say that that's a degree of negligence and carelessness, but I sure wouldn't define it as impropriety.

Senator DeConcini. OK, judge, let's go to your exhibit: or maybe the committee's exhibit No. 6, which is a 1980 document, supposedly. And I'd like to ask you if you are familiar with that document.

Judge Claiborne. Yes, I am, and I——

Senator DeConcini. Did you write it?

Judge Claiborne. Yes, I did.

Senator DeConcini. Can you go through it quickly for me and explain some of these entries here, starting with the first one of $42,450; what was that?

Judge Claiborne. Could I explain to you what this document is, or am I using up your time?

Senator DeConcini. Please. Go right ahead.

Judge Claiborne. This was a worksheet of my own—and I don't know how in the world he got it; I didn't know he had it—that I had used myself, and in preparation for the exhibit—I believe, I am not sure, I think it is 10, the yellow sheets that listed all of my earnings and so forth—and when I took all of that information down, it was a boxful of contracts and cancelled checks and invoices and things of that kind, the documents that he wanted. There were so many of them—it was 8 years of income tax returns. And I had been stacking things up on my kitchen table as I was getting them all together. And I must have picked up this document along with the other documents, but I never intended to deliver this to him. I mean, he never went over this with me. There's some information in there, of course, that he did.

But starting off, I mean, this is nothing more than my——

Senator DeConcini. What's the first entry?

Judge Claiborne. Oh, that's Van Sickle That's $42,452.54. I received fees from a man by the name of Van Sickle that I——

Senator DeConcini. Is this, then, all income under this Pioneer Citizens Bank column?

Judge Claiborne. Yes.

Senator DeConcini. The $25,747 that says 'TCB'?

Judge Claiborne. No, this is not income. This is actually a list of my——

Senator DeConcini. Assets, or——

Judge Claiborne [continuing]. No, no—deposits.

Senator DeConcini. These are deposits?

Judge Claiborne. Yes, sir.

Senator DeConcini. OK. And what's the one that says, "4/23 11,160"; it says "forgeries?"

Judge Claiborne. Forgeries?

Senator DeConcini. Yes, sir.

Judge Claiborne. My checkbook, one of my checkbooks——you get them in a box of five or six—was stolen, and I had quite a large amount of money that was taken from my account.

Senator DECONCINI. So these were not deposits. These were withdrawals by someone——

Judge CLAIBORNE. Yes, sir, they were deposits.

Senator DECONCINI. So this money was stolen from you?

Judge CLAIBORNE. That is correct.

Senator DECONCINI. As well as the 428?

Judge CLAIBORNE. By the use of forged checks, they secured the amount of moneys involved here, and these were credited to my account.

Senator DECONCINI. Oh, they were credited back to your account?

Judge CLAIBORNE. Yes, sir.

Senator DECONCINI. Why is that? Did they catch them and find the money, or what happened?

Judge CLAIBORNE. Well, I don't know whether they caught them and found the money or not, but they caught them. I don't know about——

Senator DECONCINI. They caught it before the money was taken out of your account?

Judge CLAIBORNE. I don't understand what you're saying.

Senator DECONCINI. Well, the forgery, $11,160, did someone write a check on your account and draw on your account, and the bank paid that check?

Judge CLAIBORNE. Oh, yes, oh, yes, yes.

Senator DECONCINI. So you lost $11,160.

Judge CLAIBORNE. Originally.

Senator DECONCINI. And then the bank gave that back to you?

Judge CLAIBORNE. That's correct.

Senator DECONCINI. Why?

Judge CLAIBORNE. They had me—what?

Senator DECONCINI. Why?

Judge CLAIBORNE. They asked me to prepare an affidavit of forgery, and I did, and they recredited my account.

Senator DECONCINI. Now going down under the—did you report that to the police or anybody, or just the bank?

Judge CLAIBORNE. The bank and I both reported it.

Senator DECONCINI. To whom—the FBI?

Judge CLAIBORNE. No, the police.

Senator DECONCINI. To the police.

Judge CLAIBORNE. The local police.

Senator DECONCINI. Did they commence an investigation?

Judge CLAIBORNE. Yes, sir, and there was a prosecution.

Senator DECONCINI. There was a prosecution?

Judge CLAIBORNE. Yes, sir.

Senator DECONCINI. And conviction?

Judge CLAIBORNE. I think the police——

Senator DECONCINI. Who were the people who forged the documents; do you remember?

Judge CLAIBORNE. One of—one of my relatives.

Senator DECONCINI. One of your relatives?

Judge CLAIBORNE. Yes, sir.

Senator DECONCINI. Were there more than one separate case of forgeries, different people?

Judge **CLAIBORNE**. No, sir—yes, I believe there was one other person involved in some of the checks.

Senator **DECONCINI**. Down under the "F.N.B.," you list—these are the same things? These are deposits?

Judge **CLAIBORNE**. These are deposits, yes.

Senator **DECONCINI**. You have one here, down under "8/25" from "Wyman check of $10,000." What was that for?

Judge **CLAIBORNE**. That was cash that was redeposited in my bank from cashing the $37,500.

Senator **DECONCINI**. Oh, this is part of the cash from the $37,000?

Judge **CLAIBORNE**. That's correct.

Senator **DECONCINI**. And the $3,000, the same thing?

Judge **CLAIBORNE**. The same thing.

Senator **DECONCINI**. Now, Mr. Wyman, he was a good friend of yours, I understand, before he passed away.

Judge **CLAIBORNE**. Yes, sir, he was.

Senator **DECONCINI**. And the record shows in the first trial that he gave you—you testified he gave you $100,000 in 1972. Is that correct?

Judge **CLAIBORNE**. He sure did, as a birthday present.

Senator **DECONCINI**. And that was a present to you?

Judge **CLAIBORNE**. Yes, sir.

Senator **DECONCINI**. And is it true that you put that in a safety deposit box for 6 years, not drawing interest?

Judge **CLAIBORNE**. That's correct.

Senator **DECONCINI**. Why did you do that?

Judge **CLAIBORNE**. I did it for—I considered that it was Mr. Wyman's wish that I do that.

Senator **DECONCINI**. Did he tell you to do that?

Judge **CLAIBORNE**. No; he didn't. But what he said to me, he said, "I want you to take this money, and I want you to keep it, and I want you to use it; I want you to use it for yourself." He said, "You've spent your whole life working for other people," he said, "most of whom I don't think appreciate it." And he said, "I want you to take this money," and he said, "I want you to keep it," and he said, "I want you to travel and start doing something for yourself."

Senator **DECONCINI**. Just out of a gesture of appreciation for what you've done for other people?

Judge **CLAIBORNE**. No, I—if there's any—it's common knowledge among all of the people that knew Mr. Wyman that he was a very gracious man, and he loved me very much.

Senator **DECONCINI**. Well, my time is up, but I have some further questions, Mr. Chairman, later.

The **CHAIRMAN**. Senator Rudman.

Senator **RUDMAN**. Thank you, Mr. Chairman.

Judge Claiborne, I'll try to make my questions precise. I hope you can have your answers precise. We're on a 10-minute rule.

The arrangement that you had with your former law partners is what resulted in the $41,000 of income in 1979, the $88,500 in 1980, about $40,000 in 1981. This was an arrangement, I take it, where, as cases that you started were completed, you would get paid some percentage of those fees for the work that you had done or for your origination of the cases; am I correct?

Judge CLAIBORNE. Most of them—some of them were cases that I had pending. Like the 1981 $40,000, that came from one case. That was a case that I had handled. And——

Senator RUDMAN. All right. Well, do I describe the arrangement accurately, or were there some other——

Judge CLAIBORNE. Yes, you are describing it absolutely correctly.

Senator RUDMAN. All right. And those cases were being handled by your former law associates in your old office, or by others?

Judge CLAIBORNE. No, just Mr. Brown. I had only had an arrangement with one other lawyer besides Mr. Brown. The matter with Mrs. Quintana was purely a collection item.

Senator RUDMAN. And how long did you anticipate that that stream of fees for previously accomplished work would continue?

Judge CLAIBORNE. I didn't—I do not know. I had approximately $230,000 in accounts receivable when I went onto the bench. And in going over the accounts receivables, I think that there was about 80—I at one time figured in my mind I would collect about 80 percent of it. As accounts receivable go, they were surprisingly good.

Senator RUDMAN. Well, did you expect you would collect most of those receivables over a space of 3 or 4 years?

Judge CLAIBORNE. I really had no way of knowing. I knew that I would, in all probability, collect approximately $50,000 a year for a number of years. At least, I was hopeful. I believe in 1978, I'm not sure of the exact amount, I believe it was in the neighborhood of $30,000; it was $40,000 in 1979; $88,000 in 1980.

Senator RUDMAN. So the money represented both collected receivables that were your receivables when you went on the bench and a payment of a portion of a fee for work performed by others completing work that you had started?

Judge CLAIBORNE. That is correct.

Senator RUDMAN. And you assumed that those receivables and that money might go 5, 6 years, evidently, according to your statements.

Judge CLAIBORNE. I—I—I was hopeful that it would continue 6 or 7 years, maybe.

Senator RUDMAN. All right. Now, when you left the practice in 1978 and assumed the bench on September 1 of 1978, you essentially left the law firm and you went on the bench.

Judge CLAIBORNE. That's correct.

Senator RUDMAN. You lost all connection with the firm, other than——

Judge CLAIBORNE. It wasn't a firm; it was my individual practice.

Senator RUDMAN. Well, you severed your relationship with your private law practice.

Judge CLAIBORNE. That's correct.

Senator RUDMAN. Which you were required to do. And of course, you had had some discussions about selling the practice to some people.

Judge CLAIBORNE. That's correct.

Senator RUDMAN. But that never happened.

Judge CLAIBORNE. Well, I—it didn't happen because I was confirmed on April 9—I mean, August 9—and my appointment was effective for September 1. And I——

Senator RUDMAN. Well, they were never sold. That's my only question.

Judge CLAIBORNE. That's correct.

Senator RUDMAN. You never sold your law practice?

Judge CLAIBORNE. No; I did not.

Senator RUDMAN. You never sold any part of your law practice?

Judge CLAIBORNE. No; I did not.

Senator RUDMAN. OK. Now, on Friday, when Mr. Goodman was examining you, Judge Claiborne, you said a very interesting comment on page 192 of that transcript—and I will not read all of it to you; I will assure you I'm reading you appropriate parts in the context in which I think you meant them.

You said:

> And as I have said, in all honesty, I had somewhere along the line an impression from this time that I had that something was wrong with Schedule D. I have always said that.

This describes Mr. Watson's and Ms. Lamb's visit to your office. Do you remember that?

Judge CLAIBORNE. That's correct.

Senator RUDMAN. And then you went on to say: "Every one of you on this committee has been a lawyer, has had"— and you went on to describe that everybody sometimes questions a document. Do you recall saying that?

Judge CLAIBORNE. Yes, sir.

Senator RUDMAN. And then:

> And that is the feeling that I had; that there was something wrong with schedule D. Impression that came to me afterwards. It wasn't something I formed right then when I looked at it.

Do you remember saying that?

Judge CLAIBORNE. Yes, sir.

Senator RUDMAN. And you certainly looked at the schedule D at that time, or several days later, at the time of Mr. Watson's discussion with you, from your testimony?

Judge CLAIBORNE. I think it would be accurate to state that while I have consistently maintained that I had the impression that you have mentioned—I know I am taking up your time by answering——

Senator RUDMAN. That's all right.

Judge CLAIBORNE [continuing]. So I'll cut it short—but exactly when that was formed, I am not sure. I don't know—I'm not certain now whether it was originally when I first thumbed through the return, or whether it was as a result of looking at it when he was in with it. But in one of the other places, I'm sure, I got the impression that something is wrong.

Senator RUDMAN. And that would have been a fairly long period of time before you were indicted.

Judge CLAIBORNE. Yes, sir.

Senator RUDMAN. All right. Now I want to just refer you to schedule D, if the judge could have the schedule D from the 1980 return, which is part of, I guess, 27—I think you have it in front of you there already; maybe you don't—I guess you don't. Well, while they are getting it for you, there are a number of titles across the top of that page. And one of the titles is "Date Acquired"; the other title is——

Judge CLAIBORNE. I didn't hear that, sir.

Senator RUDMAN."Date Acquired"——

Judge CLAIBORNE. Oh, yes.

Senator RUDMAN [continuing]. And the other column, which is column E—or actually, B and C are the ones I'd like you to look at, on schedule D. I think the judge can find the schedule D rather quickly. It says, "Capital Gains and Losses" at the very top of the page.

Judge CLAIBORNE. I don't see it.

Senator RUDMAN. Well——

Judge CLAIBORNE. I know it's here.

Senator RUDMAN. Well, it's there, and it says, "Date Acquired" and "Date Sold." You must have looked at that at whatever time you looked at it; is that correct?

Judge CLAIBORNE. Yes. I'm sure I noticed it.

Senator RUDMAN. All right. Now, Judge Claiborne, this very simple question—I don't want to get into accounting technicalities; I take your word you're not an expert; Mr. Watson has certainly proven he's not an expert—at the time that you looked at this schedule, which goes to what your state of mind was when you were looking at it, you certainly were aware of the fact that as of the time you looked at it, that you neither sold anything nor acquired anything in 1978, in 1980, in the normal meaning of those words. You are a Federal judge. You are a lawyer of great experience. You certainly know you didn't acquire anything, and you didn't sell anything. Am I right or wrong about that?

Judge CLAIBORNE. Well, you are partially right and you are partially wrong.

Senator RUDMAN. Tell me where I'm wrong.

Judge CLAIBORNE. Well, that I actually understood what he was doing with schedule D is not accurate. But at the time that this return was filed, and at the time that I saw this, I most assuredly knew that I did not sell my practice.

Senator RUDMAN. Right. So, if we're trying to find what your state of mind was at the time, my only point is that you say in your testimony—and I think it is very accurate testimony—that you were concerned, something bothered you, you had an impression—these are your words——

Judge CLAIBORNE. Yes, sir.

Senator RUDMAN. Certainly, on that date, when you looked at this write-off, you knew that you didn't sell anything.

Judge CLAIBORNE. Yet as I have said before, I don't know—I wasn't worried, Senator. It wasn't a thing that worried me. I think if it had been something that worried me, I would have gotten to it and very carefully reviewed the whole return.

Senator RUDMAN. But——

Judge CLAIBORNE. It wasn't. It was an impression that I got that something was wrong. I think I expressed it in one of the trials this way. I don't know whether it was the fact that it was—I think it was more the way it was done, the line down the side of the paper and the words, "Type here" indicated to me that it might have been a work paper. I think that was the actual impression that I had of what was wrong with it.

Senator RUDMAN. All right. Well, I wanted to get it on the record.

Mr. Chairman, I know we're on a 10-minute rule. Would the Chairman indulge me for 1 additional minute, and I would rather not have a second round at all, as far as I'm concerned.

The CHAIRMAN. Yes.

Senator RUDMAN. One other question relating back to my original questions to you about your practice and the money you were receiving. You had Mr. Wright write a letter to some mortgage companies. The purpose of writing to the mortgage companies was to establish that you were creditworthy to pay a mortgage which you wanted them to grant to you?

Judge CLAIBORNE. Yes, sir.

Senator RUDMAN. You listed earnings from private practice of law for 1978, 1979, and 1980 up to that date.

Judge CLAIBORNE. That is correct.

Senator RUDMAN. Did you feel, Judge Claiborne, that was a little misleading, because those payments were not going to continue for the life of any mortgage. Those payments were going to go on for 4, 5, 6 years, and at the end of that time you would have your salary as a Federal judge to support the mortgage, and only that salary.

Judge CLAIBORNE. Well, I had already been negotiating to sell property for over $750,000. I knew I was going to dispose of my property, and I wasn't worried about the future.

Senator RUDMAN. But you certainly didn't tell these mortgage companies that the income that you were representing getting from a private law practice—and a banker, looking at it, would not understand a Federal judge——

Judge CLAIBORNE. Oh, I didn't make those kind of representations to the——

Senator RUDMAN. You simply stated these were your earnings. You felt no necessity to tell the mortgage company that those earnings would have a finite life, since you were on the bench?

Judge CLAIBORNE. No. I made no such representation to them as that, and neither would I.

Senator RUDMAN. OK. Well, we'll take the record as it states.

Thank you.

The CHAIRMAN. Senator Pryor.

Senator PRYOR. Judge Claiborne, did you ever have an opportunity at any stage in the proceedings to discuss your 1979 or 1980 tax return with the IRS after it had been filed?

Judge CLAIBORNE. No. I never received a single letter from the IRS about these returns. They did not audit me. They did not communicate with me in any form, either orally or in writing.

Senator PRYOR. With your apparent knowledge of the tax law—and there has been a lot of discussion about your knowledge—do most defendants that you have known about or possibly represented, did those defendants or those individuals ever have an opportunity to talk with the Internal Revenue Service before proceedings were filed?

Judge CLAIBORNE. I—I personally do not know anyone that has ever been charged—I'm saying just mainly as a lawyer and the cases when I was practicing law—of anybody being indicted that was not the subject of the regular IRS audit.

Senator PRYOR. So, did you feel that your case was therefore uncommon?

Judge CLAIBORNE. Yes, sir.

Senator PRYOR. Did you ever have an opportunity, or were you ever invited to appear before the grand jury proceedings——

Judge CLAIBORNE. Yes, sir.

Senator PRYOR [continuing]. Relative to your Internal Revenue Service problems?

Judge CLAIBORNE. Yes, sir. Yes, sir.

Senator PRYOR. Before the indictment?

Judge CLAIBORNE. Before the indictment, I received a request from the Government, asking me if I wanted to voluntarily appear.

Senator PRYOR. And you did——

Judge CLAIBORNE. I declined.

Senator PRYOR. You did voluntarily appear?

Judge CLAIBORNE. No, sir. I declined to appear.

Senator PRYOR. You declined. I am sorry, I did not hear that.

Now, exhibit 1 of the defendants, the disclosure statement, you may have testified to this, that I think was filed May 15, 1981—which is required by Federal officials, judges, Senators, et cetera—now, who assisted you in the preparation of this particular disclosure statement?

Judge CLAIBORNE. Which return—which disclosure statement is that?

Senator PRYOR. That would be the one, judge——

Judge CLAIBORNE. Seventy-nine or eighty?

Senator PRYOR. It would be dated May 15, 1981, so it would be for——

Judge CLAIBORNE. Eighty.

Senator PRYOR [continuing]. I guess, 1980; that's correct.

Judge CLAIBORNE. The system that I followed in the office, I would take and work out on a blank and then give it to my secretary, and she would then type it, and I would sign it.

Senator PRYOR. So you did not have the assistance of an accountant, either Mr. Watson or Mr. Wright, in the preparation of this?

Judge Claiborne No, sir. I did it—we did ourselves in the office.

Senator PRYOR. Did you include $88,500 worth of income on this particular disclosure statement?

Judge CLAIBORNE. Yes, I did.

Senator PRYOR. Did you have knowledge that this disclosure statement would be filed in Washington, DC, and probably subject to being looked at?

Judge CLAIBORNE. Yes. It is subject to public perusal.

Senator PRYOR. You asked for supporting evidence from Mr. Watson, maybe on more than one occasion. And were you satisfied with the, quote, "supporting evidence," to justify your 1980 tax return? Were you satisfied with his supporting evidence?

Judge CLAIBORNE. No, I was not.

Senator PRYOR. Then, if you were not satisfied with this, why subsequent to this did Mr.—did you still allow Mr. Watson to do your tax returns?

Judge CLAIBORNE. Well, I don't think he did, sir. He did my 1981 and 1982 return. And when I found out—what started it, when I really found out, is when he came back from the Reno grand jury in the summer, I believe, or fall, of 1983, and the conversation then began about them asking him about my legal fees and he denying that he had any.

Then, within a matter of weeks, I requested him to bring in, to come to the office first, and explain this. And he did. And then I asked him 2, 3 days later to bring me in something in writing, showing me exactly what he had done. When he did that, then I did take it to a lawyer.

Senator PRYOR. I see.

Mr. Chairman, I will yield back the balance of my time.

Judge CLAIBORNE. And I was——

Senator PRYOR. Yes, sir?

Judge CLAIBORNE [continuing]. Indicted very shortly after that, within a very close period, maybe a few days.

The CHAIRMAN. Thank you, Senator Pryor.

Senator Pressler.

Senator PRESSLER. Judge, there seemed to be a change in your pattern of life about the time you were appointed to be a Federal judge. Let me say that I join in the opinion that you were a very fine lawyer. Indeed, some books have been cited where you have been cited as one of the finest trial lawyers in the country. I recall, as a member of the Harvard law forum back in 1971, sponsoring a symposium on trial lawyers, and your name was mentioned as one of the finest.

But somehow, such a fine lawyer to find himself in the position you are in is very puzzling. There seemed to be a change in your pattern of life when you became a judge. For example, the check-cashing thing—cashing a check in a casino for $37,000, or whatever it was—apparently, you put the cash in your pocket and walked out on the street with it.

Judge CLAIBORNE. I was no longer in business, you know. I didn't have a business. I ran everything through my business account when I was a lawyer. But I no longer was a lawyer. I no longer had a business. The only thing that I was obligated to do was to be sure that I kept track and a record of what I received over and above my salary.

Senator PRESSLER. I mean, I know there's nothing wrong with cashing a check for $37,000, but putting that much money in your pocket and walking out on the street, it just seems a strange thing for a Federal judge to do.

Judge CLAIBORNE. It was not a strange thing. I did not feel strangely. I have lived in Las Vegas for 35 years. We are all a little different than people anywhere else. I did not feel strangely.

Senator PRESSLER. OK. But a number of other things. For example, after that many years as a successful lawyer—and I know you said yesterday that the reason for you writing the letter saying you were in dire need of money was because you were in between selling houses. But you had been a man with a good income for a number of years. Were there other reasons? I mean, how did you spend that much money? Where did it go?

Judge **Claiborne**. How much money? What are you talking about?

Senator **Pressler**. Well, you made, on the average, $150,000 a year; you had quite a large capital gain on a house; over the years, your style of life seemed to be working 14 or 16 hours a day——

Judge **Claiborne**. Well, I—that's—to explain something to you, I mean, I got into a financial bind because I bought property that I should not have bought. I mean, I bought 25 percent interest in two apartment houses, for instance. During this period of time I purchased two dwelling houses in a very close proximity of time to each other. I got overly extended. And there was a good 3- or 4-month period that I was in one heck of a financial bind. I worked my way out of it. But there was that period of time. And in that period of time, I wrote Mr. Rothman, and I had this money due to me for a number of years, I believe at that time 4 or 5 years, maybe longer; it may have been 6 or 7 years. And I told him to please help get my money.

Senator **Pressler**. There seemed to be a change in your pattern of life. What was your primary motivating force in your life when you were a lawyer? Are you a religious man? Did that change when you became a Federal judge?

Judge **Claiborne**. No, sir. I can't say I'm a religious man. There's no human being in the world more fervently believes in God than I do. And nobody understands any more than I do the value of prayer. And I am not what you would call a devout Christian. I am—I do pray, and I pray almost daily, and I—what else can you say to that? I—my pattern of living hasn't changed in any way right now than when I was on the bench.

I read stories sometimes about using such phrases as "colorful" and "flamboyant" about me; I think I'm about as colorful and flamboyant as a cold mashed potato sandwich. But there's nothing in my lifestyle that is unusual. I have the same friends now that I had when I was a cop. I still enjoy doing the same things that I did before. I hunt. I fish. I stay in the wilderness, in the woods, as much as I can. My lifestyle hasn't changed.

Senator **Pressler**. But what motivated you to work 14 hours a day? What was the main thing?

Judge **Claiborne**. What motivated me to be a Federal judge, are you talking about, or to work that much?

Senator **Pressler**. To work that much.

Judge **Claiborne**. I started out in Reno with a rather large backlog, and I started out working that hard in the very beginning to clean it up. And I finally found I had to work that many hours when I got back to Las Vegas, to keep up.

Senator **Pressler**. But now, in terms of organizing——

Judge **Claiborne**. Could I explain one thing to you, sir?

Senator **Pressler**. OK, but——

Judge **Claiborne**. And I realize I'm taking your time, and I apologize for that.

But you are Senators, and I'd just like to explain something about Federal judges. Nearly all of us are on the bench every day. We just don't have the luxury of saying all right, I'm not going to take any cases for 2 weeks, and I'm going to write my opinions, and

I'm going to decide all these motions that I have on here, on the counsel table, and in my chambers. We don't have that luxury.

We have to move that calendar. We have to try those cases, because the backlog is so heavy. And I don't know what the answer to it is.

Senator **Pressler**. Well, Judge, let me say that——

Judge **Claiborne**. And then you come in at recess; you're working on opinions every minute that you have; you come back from lunch early, and you start writing opinions on motions that you have pending; you start writing opinions on cases that you have tried. You have to utilize every single minute of your life.

Senator **Pressler**. Judge, I realize that. Let me say that, of course, judges do get law clerks, they get a staff, but there are a lot of people in public life, and in business and in church work in this country, who have very crowded schedules, and particularly those who take on responsibilities of leadership roles. And I can say that certainly, most public officials would fall into that category.

But in terms of organizing your private life, that really doesn't excuse, does it, or we'd have a whole class of citizens excused from looking after their income taxes, or looking after their personal matters. You had law clerks to help you. You were in the Federal Building. You had secretaries to help you. Certainly, you worked hard, but so do lots of other people. And I sympathize with you a lot. But you still signed a tax return blank. That's like playing Russian roulette with yourself.

Judge **Claiborne**. It sure is. I agree with that.

Senator **Pressler**. So if other Federal judges, they have clerks, they organize themselves in such a way, why weren't you able to do that, to look after your personal affairs better? You had looked after them well——

Judge **Claiborne**. I—I don't know whether they do or not, you know? I know that I should have taken better care of my personal business than I did. But I don't think every Federal judge takes care of his personal business in the way that he should, either. I think most Federal judges are just like I am, that they don't have time enough for their personal business to give an adequate amount of attention to their business. I don't think so.

Senator **Pressler**. OK. Well, let me just ask one more to get at this theme that I'm trying to get at. Did your lifestyle change, your personal lifestyle change, when you became a Federal judge? Was there a change in your standard of living? Did you spend less time on recreation? Because your pattern of behavior seemed to change at that point.

Judge **Claiborne**. I—I spent less time on recreation because I—as I have explained before—not at first, but later on, I began to get very tired, frankly, and as I said before, I used to jump out in my pickup and drive to the mountains or to a lake early on Saturday morning; and I finally quit that. I just wasn't—didn't have energy enough anymore.

The **Chairman**. Your time has expired.

Senator Gore.

Senator **Gore**. Thank you very much, Mr. Chairman.

Judge Claiborne, yesterday, Mr. Chabraja asked you about this letter that Senator Pressler just referred to where you wrote and said you were in a real financial bind, and you said that couldn't have been a motive for your 1980 taxes because you got out of the financial bind by the time that was filed.

I wonder if it might have had some relevance to your 1979 return? You said that you were in a financial bind for a period of 3 months. Would it be fair to say that that was between June and October 1980?

Judge CLAIBORNE. Yes, I'd say that.

Senator GORE. June 1980 was when you filed your 1979 return, was it not?

Judge CLAIBORNE. Yes, June 15 was when it was filed.

Senator GORE. And you purchased a new home 3 days after you filed that return; correct?

Judge CLAIBORNE. I don't remember what——

Senator GORE. The return is dated June 16, 1980. Defense exhibit No. 1, your financial disclosure, indicates that you purchased a dwelling on Pinehurst on June 19, 1980, for more than $250,000.

Judge CLAIBORNE. I think that the date that you have is the date that I received the deed. I had been there since——

Senator GORE. You first moved in April.

Judge CLAIBORNE. Well, I was in the process of moving my office from my other home in April, the last of March and April. And my recollection is that sometime in February, I moved in.

Senator GORE. But the actual purchase was made 3 days after you filed your 1979 income tax return.

Judge CLAIBORNE. I don't know that. I've never really been aware of that.

Senator GORE. That's what the defense exhibit indicates.

Now, referring to exhibit 21, the House exhibit 21, this is the well-known memo that you sent to—that you prepared during your telephone conversation with Mr. Wright on the telephone, in which you wrote down $22,332.87 as the sum of money you had earned during your private law practice; is that correct?

Judge CLAIBORNE. Yes.

Senator GORE. Now, the testimony indicates that telephone conversation took place around May 1. Does that sound like it might be correct to you?

Judge CLAIBORNE. Yes I—earlier, I some way established that May 1 was the day that he called.

Senator GORE. Now, on March 7, according to House exhibit 18a, you had Mr. Wright send this letter when you were applying for a new mortgage, indicating that your private law fees for that year were $45,000; correct?

Judge Claiborne. That's correct.

Senator GORE. So, during the 2-month period leading up to May 1, you somehow forgot that it was $45,000 instead of $22,000, or you just didn't focus on it, or what is the explanation for that?

Judge CLAIBORNE. I never dreamed in a thousand years that Mr. Wright would take and do anything with the $46,000 figure except write a letter to the banks. That's what it was for.

Senator GORE. Well, you told him those were your earnings from private law practice, right?

Judge CLAIBORNE. I told him that that's what I wanted him to do, to write the banks, and I gave him the figures. But I certainly never considered that he would ever in a million years use it as a basis for my income.

Senator GORE. Why not?

Judge CLAIBORNE. Why not?

Senator GORE. Well——

Judge CLAIBORNE. Because it wasn't for that purpose——

Senator GORE. Let me withdraw that question.

Judge CLAIBORNE [continuing]. And it wasn't complete, and it wasn't accurately done.

Senator GORE. My point goes to your ability to remember what you had told him in preparation of that document 2 months prior to this May 1 conversation. Here you give him information saying that your private law fees are $45,000, and then 2 months later he calls you up and says, 'Now, your private law fees are $22,000; right?" And you say, "Yeah." And you write that down as your private law fees. Is that right?

Judge CLAIBORNE. That's substantially correct.

Senator GORE. Yes, that's your testimony.

Judge CLAIBORNE. Yes.

Senator GORE. All right. Then, you had the telephone conversation with Mr. Wright where he is questioning you about the $45,000 figure, or rather, the $46,000 figure, which it was at that time, and it is during that conversation that you attempt to explain to Mr. Wright, before the tax return is filled out, that, actually, these fees are made up of some other matters—the time certificate of deposit and so forth, according to House exhibit 17.

Judge CLAIBORNE. No, I was not aware at the time that he called me that he was taking this figure off of the letter that I had written him when I requested that he write the loan companies.

He gave me, I think he said, "Here is an item." And he said, "What is it?" and he told me the date and gave me the amount.

And I recall that I said I don't know.

Senator GORE. Now, when June 16 tax return was filed, it's your testimony that you did not sign that on June 16; correct? Your testimony is you signed it in blank, and you didn't sign it on June 16.

Judge CLAIBORNE. That's correct, yes.

Senator GORE. And it is also your belief that Mr. Wright is lying to us—is lying—when he says that you came into his office on June 16?

Judge CLAIBORNE. I know he is.

Senator GORE. Now, you had been friends with Mr. Wright since 1943, and that friendship was a warm one for 35 years; correct?

Judge CLAIBORNE. Yes, I'd say that.

Senator GORE. Had you known him to lie to you in that relationship?

Judge CLAIBORNE. No, I had not.

Senator GORE. It was just a sudden—this was an unexpected thing, then?

Judge CLAIBORNE. I don't think I ever dwelled on it until these circumstances occurred, Mr. Gore, in this case. I don't think that I ever looked for things of that kind.

Senator GORE. This was the first time in 35 years that you've known Mr. Wright to lie, when he says to us that you came into his office on June 16.

Judge CLAIBORNE. Well, I think sometimes "lie" is a rather strong word. But——

Senator GORE. Well, it's under oath, it's under oath.

Judge CLAIBORNE [continuing]. Im sure——

Senator GORE. Well, all right.

Judge CLAIBORNE [continuing]. I'm sure that Mr. Wright remembers it, and I'm sure that he knows that it happened.

Senator GORE. At the time that you decided to switch from Mr. Wright to Mr. Watson, there was no grand jury investigation, to your knowledge.

Judge CLAIBORNE. Oh, no, no.

Senator GORE. This case hadn't arisen or anything of the sort. But your testimony is that in spite of that long and warm friendship, all of a sudden——

Judge CLAIBORNE. Wait a minute. You said no grand jury?

Senator GORE. On your taxes—was there a grand jury investigation?

Judge CLAIBORNE. Oh, certainly, there was a grand jury. I mean, the Federal grand jury was going on then with reference to me.

Senator GORE. At the time you switched to your——

Judge CLAIBORNE. To Mr. Watson?

Senator GORE. Yes.

Judge CLAIBORNE. Oh, absolutely. The grand jury was——

Senator GORE. The record will stand corrected on that point, then.

At that point, however, you testified that your friendship with Mr. Wright suddenly went cold, and it was for that reason that you decided to look for another accountant; correct?

Judge CLAIBORNE. That's a very difficult question for me to answer. Let's put it this way. This man was busy, busy, busy. I don't understand how he took care of his business, frankly.

When I went in that day just—which was the first year that he had done my return, when he wasn't hired monthly by me—and he was abrupt, there was a coolness about him that never had been before, that you immediately notice in someone that is your friend. And I thought, and I came to the conclusion it was because that he was so busy with his other people that paid him monthly, that to just do my tax return was an imposition. Maybe it was me; maybe it wasn't what Mr. Wright did.

Senator GORE. One final question on this round, Mr. Chairman. I know my time is up.

Did you get any indication that Mr. Wright might have been unhappy with the way in which the previous year's return had been handled and maybe a little disturbed about the way in which information flowed between you and that he was not as interested in continuing to do your returns?

Judge CLAIBORNE. To say that I thought of those things at the time, I would have to say I'm sure that I did not. It was an unusual coldness on his part that never had existed before. He had always greeted me warmly: "How are you, Harry?" and I'd say, "How are you, Jay?" And we'd chat and talk. It was—he just made it doggone clear, Senator Gore, that I—he had rather have seen somebody else that day, was the way that I reacted to it.

Senator GORE. I'll come back on the next round.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. McConnell.

Senator MCCONNELL. Thank you, Mr. Chairman.

Judge Claiborne, for you to find yourself in your current dilemma, the Government had to prove three facts beyond a reasonable doubt: first, that you signed a tax return knowing it contained false information; second, that you willfully, voluntarily, for the purpose of evading a known legal duty under the tax laws, and not as a result of accident or negligence; and third, that the tax return contained a written declaration that it was not made under penalty of perjury.

Now, the Government had to prove all three of those, not any one of them, but all three of them, beyond a reasonable doubt.

And we are here because we are being asked to take another look, in effect, at those findings. You have testified that you have fully disclosed to Mr. Wright and then to Mr. Watson all of your income in 1979 and 1980. That's your testimony as I understand it.

Now, obviously that income in those 2 years didn't find its way onto those tax returns, at least not in a proper manner. But you signed them. You signed them not only in 1979 and 1980, but you also signed them in 1981 and 1982, where the testimony indicates the erroneous practice persisted.

If we are to believe that you signed those returns through carelessness or negligence, it was a repeated act, was it not? I mean, you did it in 1979—you were careless or negligent in 1979, under one tax preparer; then, you were careless and negligent in 1980, 1981, and 1982 under another tax preparer. This carelessness and/or negligence was not something that only happened once, it was not an abberation, it persisted, did it not?

Judge CLAIBORNE. No; but we did not discover it until 1983.

Senator MCCONNELL. That is assuming that we are to buy the notion that you paid no attention to the return each year as you signed it.

Judge CLAIBORNE. I did not know that schedule D was incorrectly done until 1983.

Senator MCCONNELL. Tell me again why you didn't. You have been over this at various points during the testimony. Why were you so flip about the act of signing your tax return in each of those 4 years? Why did you not make a greater——

Judge CLAIBORNE. I don't think I was "flip" at all. I've got a habit of putting things away, getting busy with other things and leaving them unattended if it involves my personal life. My habits as far as my law practice and my efforts as a judge were entirely different. I was an enigma in that regard.

Senator MCCONNELL. So in order to justify in my case, in terms of my one vote—I guess, let me put it this way, Judge Claiborne. Put yourself in my shoes. The criminal justice system has rendered its judgment that on all three of those bases that I outlined earlier, you were guilty of defrauding the Government on your tax return, and you are now serving a prison term for that.

We are here to look once again at that finding, in terms of making a judgment about your continued service on the bench.

I want you to state for me if you will, Judge Claiborne, the best possible justification this Senator could state to overturn that criminal conviction and allow you to continue to serve as a Federal district judge while you cannot perform the duties. You put yourself in my shoes and state for me the release that I would send out, saying that I have chosen to believe that because Judge Claiborne was careless or negligent 4 straight years—or, 2 years, shall I say, that are the subject of this—I have concluded that he should continue to be a lifetime member of the judiciary even though he cannot perform his function.

Tell me what I should say to my constituents in casting a vote against your removal.

Judge CLAIBORNE. Well, I, of course, have recognized, Senator, in the very beginning, that the hard choice that every Senator would have. I have been exceedingly worried by the fact that this matter is coming in an election year.

It is rather difficult to make people understand, at the best. You read some editorials and they say, "Give him a fast impeachment trial and remove him from office." There are some written that are more compassionate.

I think that you have to decide in your own mind two basic questions. The first question is, is the independence of the judiciary necessary; is the Federal courts to be taken over by the prosecutors. Are Federal judges who work hard and serve the people well—and I don't think there will be anyone, anyone—and I repeat that—anyone—that would dispute that with me—to be chased from the bench, literally chased from the bench, for any reason, whether it be ill will, animosity, or future plans?

And you have to decide, I think, the same time you are making that decision, what the effect already that my conviction and the conviction of Judge Nixon in Mississippi has already had on the judiciary and will continue to have, because let me tell you this: The biggest danger that I can see to the Federal courts is ever there be created a "buddy" relationship between the Federal judges and the executive branch of our Government.

So I think you have to decide whether it's worth it or not and make the hard choice—if I believe that this man. there was reasonable doubt that he was convicted correctly, and was he wrongfully convicted, then it's my duty, notwithstanding what other effect it might have down the road. But if you honestly feel in your heart that I got a raw deal, and that I shouldn't have been convicted, and that I in good faith disclosed all of my income to my tax preparers, and they made brutal errors in my returns for which I was not responsible, therein is, as I see, the choice that you have to make. And if you feel that is so, I think you have to vote for me.

Senator MCCONNELL. Judge, if I may respectfully suggest, I don't think what's before us is the independence of the judiciary. I think what's before us are the facts of your case. And in effect, I gather what you are saying on the second point is that we should find that it is OK to fully disclose, assuming that you are accurate about that, all of your tax information to your preparer and then look the other way, wink, ignore, be careless, be negligent, or whatever, but go on and sign that return and raise no further questions; if that's OK for a Federal judge, then it's OK for the rest of the taxpayers out there. Is that what you are suggesting?

Judge **Claiborne**. No, I'm not, and I never would suggest that——

Senator **McConnell**. But this was not an aberration. It didn't happen just one year. It happened time after time——

Judge **Claiborne**. Well, your question—your statement embraces a willful disregard. And I have never had a willful disregard of my obligations as far as my tax return was concerned.

I was negligent, but I didn't willfully disregard it.

The **Chairman**. Mr. Bingaman.

Senator **Bingaman**. Judge Claiborne, to get back to the specifics of what you turned over to your accountants, did Mr. Wright say to you at any stage, "Can you give me a breakdown of the outside income?" or did you give him a breakdown of the outside income for purposes of preparing your tax return?

Judge **Claiborne**. I gave him a breakdown on April 11—in the April 11 letter, I gave him the total amount of the fees that I received. Attached to the same letter was my W-2 with my salary, of course, on it. And I advised him in that letter that I had sold an airplane for the sum of $11,000.

Senator **Bingaman**. But as I recall that April 11 letter, it doesn't contain a breakdown in the sense of, "I got so much from this fee; I got so much from this case."

Judge **Claiborne**. No.

Senator **Bingaman**. Did you ever give him that kind of a breakdown?

Judge **Claiborne**. Never.

Senator **Bingaman**. And he never asked for it?

Judge **Claiborne**. Never, at any time.

Senator **Bingaman**. And that was not—I mean, in your previous 30 years of work with Mr. Wright, he had never asked you for breakdowns, or it hadn't been relevant because he kept all your books before that?

Judge **Claiborne**. That's correct. It never had been relevant.

Senator **Bingaman**. OK. Now, in the case of Mr. Watson, you did not intend that this document, which has now been labeled committee exhibit 6, be turned over to Mr. Watson, listing various deposits; it was just by error that he wound up with a copy of this in his files, is that correct?

Judge **Claiborne**. I must have picked it up. It's my work papers, and I must have picked it up off the table with the material that I took him.

Senator **Bingaman**. But defendant's exhibit 10, which is this yellow page listing of what you had in income and salary and then various deductions—it is a six-page document—is that virtually all you gave him relevant to your income, outside income, as part of your working with him to prepare your 1980 tax return?

Judge **Claiborne**. The six sheets on yellow paper?

Senator **Bingaman**. The six sheets, yes.

Judge **Claiborne**. Oh, there was a lot of supporting documents with it. There's the interest received statements and things of that kind; everything that supported those items on here.

Senator **Bingaman**. Was there anything in what you gave him to support the $88,500 figure?

Judge CLAIBORNE. No; just the statement that that was the amount of money that I had received from my private—collected from my private practice.

Senator BINGAMAN. Now, in this State's exhibit, or House managers' exhibit 27—I guess it is 27; no, I've got the wrong one—exhibit 22, you had your diary, and in that diary you showed four checks coming in in 1980 from outside fees. At no time, as I understand what you are saying, at no time did you advise Mr. Watson that that $88,500 figure is made up of the following four checks.

Judge CLAIBORNE. No, sir, I gave him the sum total of the four checks.

Senator BINGAMAN. OK. Did you give him your bank statements which would have reflected those—three of those checks, I guess, were deposited in your bank——

Judge CLAIBORNE. Yes; he had the bank statements for the year 1980.

Senator BINGAMAN. So three of those checks would have been reflected in that. The other one, the one that you cashed, would not have?

Judge CLAIBORNE. Yes.

Senator BINGAMAN. Let me ask why you—as I understand it you also, in addition to cashing that $37,000 fee check in 1980, you also cashed a $44,000 refund check that you received in 1980 from the Government; is that right?

Judge CLAIBORNE. That's correct.

Senator BINGAMAN. Now, I think you explained why you—or, what you did with the $37,000. What did you do with the $44,000 in cash?

Judge CLAIBORNE. Forty-four thousand in cash?

Senator BINGAMAN. Yes.

Judge CLAIBORNE. I cashed that check for the sole reason that I intended to buy some quarterhorses. And we had—I had a fellow that had been talking to me about some quarterhorses that were located in Mexico, and I was going to buy quarterhorses there, and I wanted the cash, and I needed approximately $30,000 in cash, and I cashed it.

Senator BINGAMAN. And then, did you go ahead and use the funds for that purpose?

Judge CLAIBORNE. No, I did not.

Senator BINGAMAN. What did you do with the funds?

Judge CLAIBORNE. I spent a lot of the money on real property. I—I used it on all of the things that I can—I think, in the following year.

Senator BINGAMAN. Let me ask, you indicated, I think, or testified that when you saw the return—and I guess this was in your office 3 days after the 1980 return was filed, when Mr. Watson and his partner came over and delivered it to you—when you saw it there and looked through it, you knew there was something wrong with it; it just sort of occurred to you, "There's something wrong with this." Is that right?

Judge CLAIBORNE. I had the impression.

Senator BINGAMAN. If you had that impression, why did you go forward and use Mr. Watson again in 1981 and 1982 to do your tax return?

Judge CLAIBORNE. Well, for the simple reason until 1983, I did not know what was wrong with the tax return. When I testified that I had an impression, I could just as well have said no, but it was the truth. There was something about the return that—the schedule D—either when I first saw it, or when he brought the copy to my office and I looked at it, but something about it, I created an impression that something was wrong, without recognizing then what it was.

That's all I can say. That's the best way I can express it or explain it.

Senator BINGAMAN. Thank you very much.

The CHAIRMAN. Thank you, Senator Bingaman.

I think we have time to do a second round, or at least get started on the second round.

Senator DECONCINI. Mr. Chairman, we have a caucus that starts pretty soon; maybe your side does, too. I do not know how long you want to stay. I do have a couple more questions.

The CHAIRMAN. Well, let's go for a few more minutes and see if we can—I have just a couple of questions, Judge.

Judge CLAIBORNE. Very well.

The CHAIRMAN. Let me direct your mind to that date of April 11, 1980. I believe you told us that you did some work at your house that day.

Judge CLAIBORNE. April 11?

The CHAIRMAN. When you wrote the letter to Mr. Wright.

Judge CLAIBORNE. Oh, no. No, I didn't do any work.

The CHAIRMAN. I thought you told us that you wrote the letter, and——

Judge CLAIBORNE. I did write it at my house.

The CHAIRMAN. You did. And you wrote it on old legal stationery——

Judge CLAIBORNE. Yes, sir.

The CHAIRMAN [continuing]. Which you happened to have in the house; is that right?

Judge CLAIBORNE. I had a drawerful in my desk that I use for all purposes.

The CHAIRMAN. You couldn't bear to throw it away.

Judge CLAIBORNE. No, it wasn't that, I tell you, I kept it—I had several boxes, and I kept one box, and I put it in the drawer, and I would leave it for notes for my family, I would use it and say, "I went to the store" and things of that effect.

The CHAIRMAN. Now, in that letter, you mentioned your legal income of $41,000, some-odd dollars.

Judge CLAIBORNE. That is correct.

The CHAIRMAN. And did you arrive at that because of records that you had in the house?

Judge CLAIBORNE. Yes, I had—as I—every time that I received a check that was from collections that Mr. Brown or Mrs. Quintana was making for me, I would fill out a slip, and the date, the amount of money, and what I did with it, and I'd drop it in an envelope in my desk drawer in my chambers. Periodically, I would take that envelope home, and I would transfer them to an envelope that I had in my desk at my house; and then, periodically, record it in a book that I had, so that I would have a permanent record, an adequate record, of what I was getting, because I was cashing checks, you know.

The CHAIRMAN. You also wrote a check to go with that letter; did you do that——

Judge CLAIBORNE. Yes, for $8,000.

The CHAIRMAN. Did you do that at home, also?

Judge CLAIBORNE. Yes, sir, I am—I think so—yes, I'm sure I did, yes.

The CHAIRMAN. So you had your checkbook at home?

Judge CLAIBORNE. Oh, yes, I carried it in the inside coat pocket.

The CHAIRMAN. And then your W-2 that also went with it, was that at home, or did you add that when you got——

Judge CLAIBORNE. No, it was in the office.

The CHAIRMAN. So, when you had written this letter, and when you had written the check, you took them and went to the office; is that correct?

Judge CLAIBORNE. That's correct.

The CHAIRMAN. And you added the W-2 to the package?

Judge CLAIBORNE. I just handed the letter and the check to Judy, and I said, "Get my W-2, and take this down to Jay Wright's office," and I think I said, "during your lunch hour"; I'm not sure.

The CHAIRMAN. Thank you very much, Judge.

Mr. SARBANES.

Senator SARBANES. Judge Claiborne, I want to just proceed a little bit on the same line. The letter of April 11, 1980, as I understand it, you say that you wrote that letter at home in the morning, early in the morning of April 11?

Judge CLAIBORNE. Yes, I—early in the morning; I remember that.

Senator SARBANES. And in that letter, you wrote, "The fees received during 1979 for practice before I became a judge are $41,073.93"; is that correct?

Judge CLAIBORNE. That's correct.

Senator SARBANES. Now, I'd like to ask about the disclosure statement that you filed apparently on May 14, 1980, about a month later. That's exhibit 16 of the Managers.

Judge CLAIBORNE. I'm familiar with it. Go ahead.

Senator SARBANES. Pardon?

Judge CLAIBORNE. I'm familiar with it.

Senator SARBANES. All right. Who prepared this disclosure statement?

Judge CLAIBORNE. Me and my secretary.

Senator SARBANES. So it was prepared at your chambers?

Judge CLAIBORNE. Oh, yes.

Senator SARBANES. And the information that is on the disclosure statement was given by you to your secretary?

Judge CLAIBORNE. Yes.

Senator SARBANES. So that where it lists "Non-investment income" and says "Clients' fees," this is for the year, now, 1979, is that correct, this disclosure statement?

Judge CLAIBORNE. Yes; clients' fees while in private practice.

Senator SARBANES. Clients' fees while in private practice, $23,050.76.

Judge CLAIBORNE. Yes, sir.

Senator **Sarbanes**. That 23,000-some-odd-dollar figure was given by you to your secretary to put on the disclosure statement; is that correct?

Judge **Claiborne**. That's right.

Now, I might—excuse me, sir—what did you just say?

Senator **Sarbanes**. I asked whether the figure that appears there for clients' fees while in private practice on your judicial disclosure statement, a figure of $23,050.76, was given by you to your secretary to put on this form.

Judge **Claiborne**. Oh, yes, yes.

Senator **Sarbanes**. So you are the source of that figure on this form?

Judge **Claiborne**. Yes; on this form, I am.

Senator **Sarbanes**. Thank you, Mr. Chairman.

The **Chairman**. Mr. Rudman.

Senator **Rudman**. I just have one question. I want to follow up on what Senator Sarbanes just asked you. Tell us again when you gave your secretary that figure, where you got it from.

Judge **Claiborne**. I got it from Mr. Wright.

Senator **Rudman**. Now, you have previously testified that a copy of the April 11 letter, which we will for purposes of this question assume was in fact written, that a copy of that was in your financial file in your office.

Judge **Claiborne**. That's correct.

Senator **Rudman**. And you are asking us to believe that you called Mr. Wright to get the figure, when the best evidence——

Judge **Claiborne**. I didn't call Mr. Wright.

Senator **Rudman**. He called you?

Judge **Claiborne**. He called me.

Senator **Rudman**. But you knew that just shortly before that, you had written a letter on the 11th of April in which you had said the figure was different than that, Judge Claiborne.

Judge **Claiborne**. I was not aware at the time that I did that—of that event.

Senator **Rudman**. What was the date of that event?

Judge **Claiborne**. May 1.

Senator **Rudman**. 1980?

Judge **Claiborne**. Yes.

Senator **Rudman**. What was the date of the letter that you tell us that you sent to Mr. Wright?

Judge **Claiborne**. April 11.

Senator **Rudman**. 1980?

Judge **Claiborne**. That's correct. I did not, at the time that I wrote down the $22,000, I did not think of that—of the difference.

Senator **Rudman**. That's a difference of 19 days; am I correct?

Judge **Claiborne**. That is correct.

Senator **Rudman**. And you are asking us to believe your testimony——

Judge **Claiborne**. I hope you would.

Senator **Rudman** [continuing]. Well, you are asking us to believe that on a differential of 19 days that you put a number on a form, and aside from whether you looked at anything that day or not, that you forgot that your income for the year was $40-some-odd-thousand, not $22,000. I mean, that's what you want us to believe?

Judge CLAIBORNE. I don't think I can say that I forgot, and I don't think that I can say to you that I have any kind of mental impression exactly what I did and went through at the time. What happened was that I had sent the letter with the 41; I did not recall, I did not think of it.

Senator RUDMAN. Well, Judge Claiborne, you know, you are a successful man, but you are not a multimillionaire, and it would seem, at least to this Senator, from just the ordinary experience of ordinary people, that when you are writing down a figure 19 days after another figure, that you might recall that something as important as filling out a Judicial Disclosure Form, that a difference of $20-some-odd-thousand might at least occur somewhere in your mind.

Judge CLAIBORNE. It did not.

Senator RUDMAN. And you are saying it did not?

Judge CLAIBORNE. It did not.

Senator RUDMAN. And you are saying that you simply took it from Wright and put it down?

Judge CLAIBORNE. That's correct.

Senator RUDMAN. And it never crossed your mind that only 19 days earlier, you had said it was 41?

Judge CLAIBORNE. Not until we began to explore the disclosure forms, and when we were doing that, I discovered that there was a difference.

Senator RUDMAN. So what you're saying, it's just a horrible coincidence.

Judge CLAIBORNE. I don't know what the coincidence—I don't think I would call it a coincidence.

Senator RUDMAN. Then, what would you call it?

Judge CLAIBORNE. Well, I don't know what you would call it. I don't think that I'm unique in that regard that—I may well be.

Senator RUDMAN. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Heflin.

Senator HEFLIN. My time ran out before I could finish in regard to the amended returns involved. You testified that you filed an amended return for 1981 to correct the application of $40,000 of fees, but that you did not file an amended return for 1980, which had the $88,500 fees misapplied.

Could you tell us why you did not file an amended return for 1980?

Judge CLAIBORNE. The 1979 return was amended before I was indicted, and the 1979 return, of course, was one of the counts of the indictment. The 1980 count was the other count on which I was convicted.

The 1979, of course, having already been amended, we didn't have to give any attention to that. The 1980, my attorneys concluded that at the time that I was going to amend the 1981 return, or when I was talking to them about it, that I should amend the 1981 return, but that because of the fact that the trials were pending, that I at that time should not amend 1980. And the 1980 return now is in civil conference.

Senator HEFLIN. All right. So now, you state that this was brought to your attention because of the Ethics Report, and some Judge Tamm, or something. How was it brought to your attention?

You had filed an Ethics Report showing some $22,000 when you had over 40 in 1979. Wherein did somebody bring this to your attention from that report?

Judge **Claiborne**. Well, I think I left the wrong impression. I think my attention came to the report by reason of communications received by Judge Tamm. I don't remember when, or what the nature of them was. I seem to recall it was some kind of inquiry from the Judicial Ethics Committee. In the process of reviewing a number of disclosure forms—of course, the only year ahead of 1979 was 1978—I discovered that there was a discrepancy between the amounts.

Senator **Heflin**. In other words, you remembered then that your income for 1979 was in excess of $40,000, and it had been listed here at 23?

Judge **Claiborne**. That's—23,000, yes.

Senator **Heflin**. Do you have any letters or anything else from Judge Tamm that should be made an exhibit to corroborate that?

Judge **Claiborne**. Well, I don't know what would corroborate it except that it's my—I don't have those, no, sir.

Senator **Heflin**. You have no other letters or anything?

Judge **Claiborne**. Not with me, no.

Senator **Heflin**. All right. Now, did Mr. Watson fill out your 1982 return?

Judge **Claiborne**. Yes, sir.

Senator **Heflin**. Would it have been filled out somewhere after, or somewhere from April 1, 1983 to some other later date—your 1982 return being filled out in 1983?

Judge **Claiborne**. I think 1982's return was the last return he made, because we discovered all this matter in 1983, so I'm sure it's the last return.

Senator **Heflin**. Well, what I'm asking you, was it after—what I'm getting at is this—your amended return is filed March 11, 1983. The 1982 return is not due until April 15, 1983. And Mr. Watson filled out your 1983 return. You had hired Mr. Sorenson, an attorney, to make an amended return for you for 1979. Why did you continue at that time, then, to continue with Mr. Watson?

Judge **Claiborne**. Well, I went to Mr. Sorenson because he was a tax specialist, he was a tax lawyer, and a tax trial lawyer, and I didn't go to him as a tax preparer or as a client for long-range business. I just went to him to get him to amend the 1 year.

Senator **Heflin**. Well, he was a tax preparer for the amended return, was he not?

Judge **Claiborne**. Yes, but I mean, not as such, Senator.

Senator **Heflin**. All right. So now, in 1980, in April—and I believe it has been testified to in evidence here—that prior to filling out your 1979 return, the newspapers contained information that you were a target; and, according to the Las Vegas Sun special report on this, that in early April 1980, it was revealed that you were being investigated; and then, that all three Las Vegas newspapers, the day after the Sun revealed the Claiborne investigation, quoted the Judge as saying "The Strike Force should be thrown out of Nevada." He called the strike force prosecutors "a bunch of crooks and rotten bastards who think everybody in Nevada is a crook." Claiborne continued his blistering attack: "Jeffrey Anderson has no respect for decency, no respect for people's civil liberties. Those bastards are out to destroy Nevada, and I am not going to let them do it. I'm not going to let them ride roughshod over this community."

Is that recitation of your statement to the newspaper reporters correct?

Judge CLAIBORNE. Absolutely correct.

Senator HEFLIN. All right, sir.

Now, Mr. Goodman, in his——

Judge CLAIBORNE. And absolutely true.

Senator HEFLIN. Mr. Goodman, in his statement, made a statement, as I wrote down, that it would be difficult to believe that you were in a frame of mind to cheat on taxes as of that time.

Now, from my viewpoint, it is also difficult to believe—and I'm not saying it to come to any conclusion one way or another—that you would be so inattentive to your tax returns as you have testified here that you have been.

What would you say in regards to that, in creating this atmosphere of knowing that you were a target, and also knowing of the fact that frequently, when they cannot indict someone on other charges such as wiretapping or bribery or other things, they resort to tax returns as to the method by which they get people?

Judge CLAIBORNE. And Senator, that's exactly what I said to Mr. Watson when he came in with the return, and I looked down, and I saw a refund. I was not expecting it, because I had written the $20,000 tax check when we made an application for the extension. And I saw that, and I said, "How can you accomplish this?" and he, as I said, very professionally advised me. I said to him, I said, "Can you support it?" And he said, "Yes, I can."

And I said, "Well, I'm"—"I tell you," I said, "I've got troubles enough with the FBI, and I sure can't stand any trouble with the IRS, so you'd better be correct."

Senator HEFLIN. All right, now. You are talking about your conversation with Mr. Watson, and that's sometime in 1981. I'm speaking about right now, first, in April 1980, this is in the newspapers; you have this atmosphere created. And yet, in that year you signed a tax form in blank.

It is difficult to understand, with that atmosphere, why you would sign a tax return in blank as of that time.

Judge CLAIBORNE. Well, for the simple reason that I was sitting in the eastern district of Oregon at the time, and I was not in Las Vegas; I could not get back in time. I did not think about extensions. I had done that before with Mr. Wright. I trusted him. He trusted me. We had that type of relationship. And so I did it.

Senator HEFLIN. Well, you signed that return in blank, according to your testimony, I believe, on May 2. You dated it June 15, which is a substantial number of days later.

Did you anticipate that you would be gone at that particular time close to 44 days—I mean, 34 days?

Judge CLAIBORNE. Yes, I did. I understood it was a 6-week trial when I left.

Senator HEFLIN. You didn't anticipate returning on weekends in the meantime?

Judge **Claiborne**. Well, I don't know whether I would have or not. I mean, I don't think I ever stopped and made a—I don't recall thinking about what I was going to do each weekend.

The **Chairman**. Your time has expired.

Senator **Heflin**. All right, sir. I have other questions.

The **Chairman**. Senator Heflin's time on this round has expired.

The Chair is very reluctant to do it, but I suppose the time has come we should take a break. We will recess until 2 o'clock.

Mr. **Goodman**. Mr. Chairman.

The **Chairman**. Yes.

Mr. **Goodman**. Before we break, in compliance with the Chair's directive yesterday, we did obtain an affidavit from Ellen M. Arthur.

Judge **Claiborne**. Can I——

The **Chairman**. Yes, Judge, you may step down.

Senator **Rudman**. Could we have quiet in the hearing room, Mr. Chairman? I cannot hear.

The **Chairman**. Proceed, Mr. Goodman.

Mr. **Goodman**. Thank you. I'll repeat what I said.

Pursuant to the Chair's directive of yesterday, we have obtained an affidavit from Ellen M. Arthur, who was the employee of Joseph Wright, Jay Wright, who actually has first-hand knowledge about the April 11, 1980 letter being delivered to that office. I don't know whether it has been made available to the Chair or not. If not, I am prepared to deliver it.

The **Chairman**. Has it been made available to the managers on the part of the House?

Mr. **Goodman**. I don't know the answer to that.

Mr. **Rodino**. No.

Mr. **Goodman**. We gave it to the clerk for copying purposes.

Also, there is an affidavit accompanying it from the preparer of the affidavit, Annette Quintana, in my office, giving her description, the physical description, of Ellen M. Arthur at the time that the affidavit was taken from her.

The **Chairman**. Will you please read the affidavits?

Mr. **Goodman**. Certainly.

The affidavit, first, of Annette R. Quintana states:

> Affidavit, State of Nevada, County of Clark.
>
> Annette R. Quintana, being first duly sworn, upon her oath deposes and says:
>
> First, that on September 22, 1986, she took the information from Ellen M. Arthur which is contained in Mrs. Arthur's affidavit.
>
> Second, that the appearance of Mrs. Arthur is that she is five feet four and a half inches in height, her hair is frosted with some dark hair showing, and her body is of an average size. She is not unusually thin, and is not fat. Her demeanor is graceful and she is soft spoken.
>
> Third, I know Connie Wright, and in my opinion, it would not be unusual for a person who did not know either Mrs. Wright or Mrs. Arthur to take one for the other after a brief encounter.
>
> Signed, Annette R. Quintana.
>
> Subscribed and sworn to before me this 22nd day of September, 1986, Loretta F. Wentzel, Notary Public.

> Affidavit, State of Nevada, County of Clark, ss.
>
> Ellen M. Arthur, being first duly sworn according to law, upon oath, deposes and says:
>
> First, she is 59 years of age, resides at 3745 Manhattan, Apartment Number 86, Las Vegas, Nevada, 89101, and is employed as a financial consultant by Southmark Corporation in their Financial Service Division. Affiant has been in investment and

financial counselling for different companies in Las Vegas, since she left employment with Joseph Wright in 1982.

Second, in approximately 1960 Affiant had been in a severe car accident and her physicians advised her that her recovery would be improved if she moved to a dry climate at a higher altitude, so Affiant located in Las Vegas, Nevada.

Third, affiant formerly worked as an executive assistant in court services for the Las Vegas Justice Court for approximately four years when she came to Las Vegas in 1960, having already worked in the field of systems analysis for Beckman Scientific Instruments in Fullerton, California, and Harvey Machine Company, predecessor of Martin Marietta Corporation.

Fourth, in February, 1978, Affiant became employed as office manager and senior staff accountant for Joseph Wright. Her employment continued there until May, 1982.

Fifth, in May, 1982, Affiant had reached the top level of remuneration that Mr. Wright (or Apple, Wright, McNair & Apple) could afford, and being desirous of entering investment counseling, Affiant left her employment with Mr. Wright under amicable conditions.

Sixth, at the time of Judge Claiborne's second trial, Joseph Wright's name appeared in the Las Vegas newspaper with a report that there was confusion on whether certain information had been received on Judge Claiborne's taxes.

Seventh, when Affiant read this newspaper account, she called Oscar Goodman's office and asked to speak with Mr. Goodman and was told he was in Reno. Affiant asked to speak to Mr. Goodman's secretary. Affiant identified herself as a former office manager for Joseph Wright and that there might be something she might be able to contribute on the office procedures on the period of the 1979 tax returns. When Affiant did not receive a return phone call from Mr. Goodman, she assumed the matter was closed as far as additional testimony was concerned.

Eighth, affiant is a widow and at the time she made the phone call described in paragraph 7 hereof she was not anxious to appear and testify, and she was fearful of repercussions against her by the IRS or the FBI. For that reason the message she left was somewhat general and she wanted to speak to Mr. Goodman himself because he was in a position to evaluate what she could contribute. Affiant only wanted to testify if it were necessary as an important factor.

Ninth, on Saturday, September 20, 1986, Affiant observed the Senate Committee's evidentiary proceeding rebroadcast on television and the delivery to the Wright office of paperwork from Judge Claiborne was referred to as "alleged". Affiant realized at that point that the delivery had never been confirmed and she could confirm that. Affiant called on Sunday, September 21, to the Las Vegas Sun to the City Desk, realizing the importance of the time for Monday A.M. hearing and was told to call Mr. Goodman's office on Monday, which she did. Affiant's duties with stock transactions before Wall Street closings made it necessary for Affiant to contact the Goodman office only around the noon hour of September 22, 1986. When she first called, Mr. Goodman's secretary was out to lunch and she had to wait until after the lunch hour to renew the call.

Tenth, on or about April 11, 1980, at mid-morning, Mrs. Wright who normally acted as secretary and receptionist for Mr. Wright and his staff told Affiant Mrs. Wright's sister had come to the office and Mrs. Wright wished to leave her desk and had been alerted by Mr. Wright before he left the office to expect a call from Mr. Claiborne's office in regard to tax matters. Mrs. Wright asked Affiant if Affiant would mind taking the phone calls from the receptionist. Affiant left the door open to her office and the phone rang subsequently and the expected call was from Judge Claiborne's secretary who identified herself as Judy. Judy said she had received instructions from Judge Claiborne to hand carry tax materials including his W2 and income information for the tax year 1979. Judy was to call to make very certain that this material was delivered directly to Mr. Wright. Affiant identified herself as the office manager and told Judy that Affiant had been left in charge of the matter and Judy should call out to Affiant when Judy came into the office so that Affiant would be able to take care of it for her. When the secretary, Judy Ahlstrom [whom Affiant also saw on television on Saturday, September 20, 1986], came in, Mr. Wright had not returned nor had his wife, and Affiant was somewhat concerned in complying with Judge Claiborne's request to hand-deliver the materials to Mr. Wright. Affiant told Judy that while Judy was there, Affiant would walk back to Mr. Wright's desk and place it in the center of the desk so that it would be in front of him when he sat down. In addition to this, Affiant wrote a note and placed it on his diary page which was office procedure and left instructions for Mr. Wright to look on his desk so that he would not miss seeing the envelope. Judy had waited for Affiant to come back to the reception room and Affiant told Judy the steps Affiant had taken to assure direct delivery to Mr. Wright and Judy thanked Affiant and left. Judy had impressed upon Affiant the importance of direct delivery to Mr. Wright so that when Affiant left for lunch she contacted another accountant in the office, Mr. Ken Swanson, and told him that when Mr. Wright came in to make sure he did see the envelope with Mr. Claiborne's materials in it.

The material was contained in a regular-sized legal envelope, not large or bulky, and Affiant wanted to be sure that Mr. Wright did not overlook it

About two or three days later, Mrs. Wright came into Affiant's office clearly tense and somewhat agitated and she asked Affiant if she had seen the information from Mr. Claiborne's letter as it could not been found or had been misplaced. Affiant had not worked on Mr. Claiborne's account and Affiant could not understand why the Wrights went through all of Affiant's files unless they thought perhaps the Claiborne material had been misfiled with other clients' materials. The Wrights went through all Affiant's files in Affiant's presence.

The loss or misplacing of materials was not an unusual occurrence in Mr. Wright's office. He had more business than he should have had for a single practitioner. He had an overload at times, with files stacked on the floor waiting for review. From time to time paperwork would be misfiled, attached on the bottom with paperclips and so forth. To prevent Affiant's own clients' paperwork from being mislaid or misfiled, Affiant kept her own system for control, so if she put materials in Mr. Wright's office for review, she kept a check list, and if the materials were not returned to her in 24 hours she would go in Mr. Wright's office to determine why the paperwork was delayed.

It was not uncommon for 1040s to be signed before their preparation in unusual circumstances such as Judge Claiborne being out-of-town. Affiant was in the Wright office before Judge Claiborne went to Los Angeles and Claiborne had come in to sign the 1040 return. Affiant did not see it done, but heard Judge Claiborne say he would be out-of-town and Wright should take care of this if he didn't get back and that Mr. Wright should let Mr. Claiborne know by phone that it was taken care of; that Mr. Wright could go ahead and file the return, but to let Judge Claiborne know by phone if the return had been filed. On that occasion, Affiant took the opportunity to ask Judge Claiborne to speak at a dinner meeting of the ABWA (American Business Women's Association) and several weeks later Judge Claiborne did speak to the association on matters related to the legal ramifications attendant to ERA legislation.

Signed, Ellen M. Arthur.

Subscribed and sworn to before me this 23rd day of September, 1986, Loretta F. Wentzel.

The CHAIRMAN. We thank you for obtaining that information for us, Mr. Goodman. We will give the House an opportunity to review it and an opportunity to comment on it if they wish to do so.

At this point we will recess until 2 o'clock.

[Whereupon, at 12:40 p.m., the committee was recessed, to reconvene at 2 p.m. this same day.]

The CHAIRMAN. The committee will come to order.

Last week, Mr. Goodman asked that one of the witnesses whom he had subpoenaed, Ginny McIlwaine, be excused, and the record should reflect that Ms. McIlwaine was in fact excused.

Also, at the conclusion of Mr. Jesinger's testimony last week, Mr. Goodman asked that we conduct a further examination of the sealed material which the committee had received from the U.S. District Court. The purpose of the request was to ascertain whether the sealed material contained any additional Federal Bureau of Investigation 302 memoranda of an interview with Joseph Wright.

The counsel and the staff director of the Committee have conducted that search, and they have reported to me that the material does not contain any FBI 302 memorandum of interviews of Mr. Wright other than those which have been disclosed.

Now, Mr. Chabraja, did you want to comment on the affidavit of Ellen Arthur?

Mr. CHABRAJA. Mr. Chairman, I have very few remarks. I have examined the affidavit of Ellen Arthur. There is no suggestion in that affidavit that Ms. Arthur ever saw the alleged April 11, letter, and there has never been any dispute that I am aware of that on the 11th Judy Ahlstrom went over to the Wrights' office with an envelope

Mr. Goodman has known about this witness since the time of trial, according to the affidavit. She telephoned him and asked to speak to him. With the resources he has available, I am comfortable that the defense team was aware of all employees of Joseph Wright. This is hardly a surprise.

With respect to much of the other information contained in the affidavit, it is what might be described as unreliable. It is hearsay, at best; Ms. Arthur reporting conversations with others or conversations that she overheard but did not participate in.

Once again, we hear the specter raised of FBI intimidation. Certainly, we have heard that mantra before, but nothing in that affidavit that suggests in any way Ms. Arthur was ever intimidated, other than that broad statement.

I think that, on the whole, the suggested line of testimony is irrelevant, but certainly it is incredible. It seems to me that in each of the last 3 or 4 days we have been treated at the end of the day to a new document or a new witness, a new call-in. I think with all respect that we probably should have reached the end of the line.

Mr. GOODMAN. May I be heard, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. GOODMAN. Thank you.

Mr. Chairman and members of the committee, if there is one thing I have learned since I have been back in Washington, because I came back here as a babe in the woods, I had no idea what was available to our Government. If we launched a criticism or an attack upon the IRS or the FBI through our pre-trial motions at the court level and continued allegations through this proceeding, it was done with naivete on my part because I had no idea what resources were available to those Government agencies. I had no idea what resources were available to the House and its staff and the kind of help that they get.

I take offense at the suggestion that I was derelict in my responsibility as far as this witness is concerned. I want this committee to be advised, because I think it is important and it goes to the spirit of these proceedings, that the only fees which were received on Judge Claiborne's behalf to litigate two trials, multiple appeals, petitions to the Supreme Court were those moneys which were received initially by persons who were friendly with Judge Claiborne, and most of those fees went to pay the barest of costs necessary to prepare a defense under those circumstances.

I believe that this committee is entitled to be informed that the efforts on my part and the part of my associates, everybody who is at the table, Senator Cannon included, are pro bono, because we believe in a principle. And that is the reason we are fighting so hard to have the entire matter be brought before this committee and the U.S. Senate.

If Mr. Chabraja had not brought that up, I would not have been compelled to mention it. But I do think that it is relevant and it is material as to the type of thought processes and state of mind that Judge Claiborne and his counsel possess.

And I would respectfully suggest that this woman's testimony goes to the very heart of the matter. My office has received, I am advised, 10, 20, 30 phone calls a day from people calling in information as a result of seeing this on TV. Fortunately, one of the secretaries was wise enough yesterday to ferret out one of these calls and say this is an important one; because most of the calls we get are from people who are throwing in their 2 cents, respectfully to those people, because they want to help but they do not have something that is relevant and important.

I cannot return those phone calls when I am in Washington, DC trying to prepare for the next day. You gentlemen who are lawyers, you know what I am talking about. If you practice trial law, you spend all night long preparing for the next day. The questions do not come without knowing what the pleadings say and the preparation that is necessary.

And I was not derelict as far as this woman is concerned. She did not leave a message indicating that she had specific information which would have triggered me to return the call. It is very possible when I returned from Reno after the trial was over that I called the woman back. I do not even remember the phone call. But for purposes of the fact-finding, the truth-finding process in this proceeding, I submit that her presence is absolutely crucial.

The CHAIRMAN. Now, Mr. Chabraja, you raised a question as to the credibility of the evidence that Ellen Arthur might produce. The question of credibility is one for the full Senate to determine.

It would be my intention, subject to further discussion that we may have here, to admit the affidavit into evidence for whatever probative value it may have.

Mr. CHABRAJA. Mr. Chairman, with all respect, I think that is the worst of all worlds. I am the last one in the world that wants to extend these proceedings, but I would argue vigorously against the admission of hearsay affidavits.

If the committee is bound in the intent to receive affidavits that I cannot cross-examine, I ask at least to be able to submit counter-affidavits from persons in the Wright office that would bear upon this same subject matter.

The CHAIRMAN. That right will be preserved for you.

Mr. CHABRAJA. Thank you.

The CHAIRMAN. And, of course, the full Senate may very well wish to call Ms. Arthur. That opportunity will be available to the full Senate.

Mr. GOODMAN. If I may be heard, Mr. Chairman, I would respectfully suggest that this is a matter of credibility. It is a matter of the triers of the fact to judge the demeanor of the witnesses. And if in fact there is a question as to whether or not this letter was in fact delivered, as Ms. Ahlstrom has testified to and as Judge Claiborne has testified to, and the Wrights indicate that their procedures were such that they never lost anything and the letter was not delivered, I think it comes down to a question as to who the trier is going to believe. And the only way I know how to do that, as a lawyer in a courtroom, is to have the trier look at the demeanor of the witnesses and judge the credibility.

The CHAIRMAN. And the Senate may very well wish to do that, Mr. Goodman.

Senator RUDMAN. Mr. Chairman, I would just ask a question if I may, a brief question on this issue.

The CHAIRMAN. Senator Rudman.

Senator RUDMAN. Mr. Goodman, since you are probably as familiar as anyone with the record, has there been a dispute seriously challenged by the Government as to the fact that Ms. Ahlstrom at one time delivered an envelope to the Wrights' office? Is that in dispute?

I thought I heard Mr. Chabraja say it was not in dispute. Is that, in your view, in dispute?

Mr. GOODMAN. Yes.

Senator RUDMAN. By whom?

Mr. GOODMAN. At the trial level.

Senator RUDMAN. Here.

Mr. GOODMAN. At this point?

Senator RUDMAN. Yes.

Mr. GOODMAN. The first time I heard that there is a concession that she was there and she delivered something was today.

Mr. CHABRAJA. We have offered no evidence to the contrary. Absolutely none.

Senator RUDMAN. It is my understanding, Mr. Goodman—and, you know, we have met in session before we came out. We try to be scrupulously fair with everyone here—that there was no testimony and any effort to impeach Ms. Ahlstrom's testimony or Judge Claiborne's testimony as related to her activity that day. The fact that someone else may not have remembered certainly was not persuasive to me, or I think to other members of the panel, who can speak for themselves. Ms. Ahlstrom was a credible, believable witness who works for the Federal Government in Nevada and testified that she went there. And I believed her.

Now, just assuming for a moment that that is not in dispute here, I would like you to just tell us once more—and I agree with the chairman's ruling, but I just want to understand.

Assuming that is so and the affidavit says she does not know what was in the envelope, but she delivered the envelope, what probative value could her appearance have before us if we assume that there is no argument that she was there?

Mr. GOODMAN. I do not have to say it is a good question because you know it is a good question.

Senator RUDMAN. It is a very sincere question. I am not trying to ask good questions.

Mr. GOODMAN. Oh, I know.

Senator RUDMAN. I would like to get out of here.

Mr. GOODMAN. I am trying to give a very careful answer. I was not back in my office when this woman was interviewed yesterday. I would like to make a phone call. It is not going to take up too much time to find out whether or not Annette Quintana, when she was speaking to the witness, the affiant, either had the April 11, 1980, letter available or questioned her as to whether or not she saw the April 11, 1980, letter; because as I understand the affidavit, Senator, she is saying that she delivered material to the desk of Mr. Wright.

Senator RUDMAN. In an envelope. That is what it says.

Mr. GOODMAN. In an envelope? It does not indicate that it was taken out of the envelope?

Senator RUDMAN. No, it does not. It says the envelope was placed on the center of Mr. Wright's desk. That is what the affidavit says.

Mr. GOODMAN. All right. I would like to be able to explore with this witness telephonically, Mr. Chairman.

The CHAIRMAN. My ruling is not written in stone, and if there is further information, we can alter the—yes, Senator Gore?

Senator GORE. Mr. Chairman, I would suggest that we offer both the counsel for Judge Claiborne and counsel for the House the opportunity, or suggest that they have a joint deposition which could be filed as a supplement to the record that this committee will forward to the House, on which the Senate can base its decision whether or not to call this woman as a witness.

Mr. GOODMAN. If I may, Mr. Chairman, if I could improve on Senator Gore's suggestion, if that is adopted, perhaps it could be the order of the Chair that the deposition be a videotape deposition so at least the demeanor of the witness under questioning by the respective counsel could be considered by the Senate.

Senator DECONCINI. Mr. Chairman.

The CHAIRMAN. Senator DeConcini.

Senator DECONCINI. Mr. Chairman, I think the ruling of the Chair is more than generous to the defense here in permitting that affidavit in in the first place, particularly with the managers saying that there is no question as to that.

With all due respect to Mr. Goodman, I think we have gone amply far enough in this issue, and I hope the chairman sticks with his decision, preliminary decision. I do not think we need to prolong this particular piece of evidence.

The affidavit is in. That is what Mr. Goodman asked. We put it in. And I would not have ruled that way had it been my judgment because I do not think it has that much bearing. But, nevertheless, I support the chairman's decision, and I do not think we can go any further.

Mr. GOODMAN. Mr. Chairman, if I could just address Senator DeConcini to the issue as to whether I asked that it go in. I did not ask that the affidavit go in.

Senator DECONCINI. Why did you bring it here, then? Just out of——

The CHAIRMAN. The Chair requested it.

Mr. GOODMAN. I was directed yesterday, Senator DeConcini, to provide an affidavit so the committee could make a determination as to whether or not they wanted the witness.

The CHAIRMAN. And for whatever probative value it has.

Senator DECONCINI. You do not want it in? You do not want the affidavit in?

Mr. GOODMAN. Well, as second best, I sure want it in.

Senator DECONCINI. Pardon?

Mr. GOODMAN. Second best, I do.

The CHAIRMAN. I think subject to further developments, we will admit it, and you are going to make some inquiries and you will keep the committee advised of the result of those inquiries.

Mr. GOODMAN. Yes, sir.

The CHAIRMAN. Now, if Judge Claiborne will resume the witness stand. When we recessed at 12:40, Senator Heflin had just completed his second round of questions.

Senator Hatch, you have not had a second round.

Senator HATCH. Well, Judge, as I have listened to this, I have been in a quandary because having been a former trial lawyer myself, I know how all-consuming that is. And having watched our Federal District judges, I know how all-consuming that is.

I daresay that most members of the U.S. Senate do not spend a lot of time preparing or even reading their own tax returns before they sign them, and I can understand all of that.

I also can understand why Mr. Watson, in his own domain with this big letterhead with all the services that he provided and his ability to speak not under pressure, might be very impressive or might have been very impressive at the time.

So I am concerned about those things. On the other hand—and I am also concerned about some of the testimony that has been brought out here. I suppose this recent affidavit, the reason that it is important is because she seems to confirm many of the things that you have asserted in the trial, and some things that perhaps were not asserted in the trial but are asserted here.

It still comes back to those questions concerning, even so, how you could have had $750,000 on a sale of your home minus whatever the basis of that home was, minus $100,000, minus the cost of your replacement dwelling. I suppose those were the deductions, and still wind up basically with a tax refund on that year.

Your response to me was, as I recall, that you had relied on Mr. Watson who said you could take the 1978 loss of your business, which you had not been able to sell because you went on the Bench before you could get it sold, as an offset, I take it, to whatever capital gains taxes you might have been assessed. And you accepted that from him as an IRS expert.

Is that a fair statement of the way you felt?

Judge CLAIBORNE. I think that is a fair statement.

Senator HATCH. Do you consider yourself a student of the Internal Revenue Code?

Judge CLAIBORNE. I do not hear very well, sir. Some things I do not——

Senator HATCH. I take it, as you have indicated here, you are not a student of the Internal Revenue Code. You would not be a tax lawyer?

Judge CLAIBORNE. No.

Senator HATCH. You never practiced tax law?

Judge CLAIBORNE. None.

Senator HATCH. Did you ever prepare a tax return in——

Judge CLAIBORNE. No, sir.

Senator HATCH. Not even your own personal one?

Judge CLAIBORNE. No, sir.

Senator HATCH. You always relied on either Mr. Wright or somebody else?

Judge CLAIBORNE. That is correct.

Senator HATCH. Have you had an interest in tax law?

Judge CLAIBORNE No, sir.

Senator HATCH. You tried some tax fraud cases, though?

Judge CLAIBORNE. Yes, sir.

Senator HATCH. And I presume, like most trial lawyers, you prepared on the actual facts of those cases as strenuously as you could?

Judge CLAIBORNE. That is right.

Senator HATCH. Like most trial lawyers, after the case is over, do you tend to remember all the law you remembered on those cases?

Judge CLAIBORNE. No, sir. I did not even recognize some of the cases that they read to me here. Already I have forgotten.

Senator HATCH. So you might have been an expert at that time for that particular case and those particular facts, and even on that particular law, but the minute the case was over, you would go on to another case; is that right?

Judge CLAIBORNE. That is correct.

Senator HATCH. So that particular information does not particularly stick with you?

Judge CLAIBORNE. Not at all.

Senator HATCH. Well, that has been my experience. I used to try medical malpractice cases, and at the time of the trial when I would defend them, I knew as much as the doctors did about any particular medical procedure. Two weeks later, I could not tell you one word from another because I was into all kinds of other busy things.

Is that basically what you are saying here, that you were busy, you did not pay much attention to these things?

Judge CLAIBORNE. You speak it much more eloquently than I did, but that is what I meant.

Senator HATCH. Well, that is what it seems to me is your defense. And I have to confess that I find some difficulty, knowing human nature and knowing what trial lawyers are like and knowing what trial judges are like and knowing the pressures that are on them, I find some difficulty not accepting your story, except it is very—you know, I think even with the little I know about the Internal Revenue Code, and, of course, I have tried tax fraud cases, too, a number of them. But I still do not consider myself an expert. What little I know, it still seems odd to me that you would have allowed him to get away with deducting—or giving you a basis in your business that you had not obtained and allowing the deductions from that as though that business asset really existed at that point under the Internal Revenue Code.

Didn't that trigger any question in your mind at all, that schedule D? You said you had an impression——

Judge CLAIBORNE. Had an impression. I've never deviated from that, that I had an impression that it either didn't look right or that there was something wrong with it.

Senator HATCH. But because of the press of business, the press of your career, really your judgeship, you kept putting it off and putting it off?

Judge CLAIBORNE. I sure did.

Senator HATCH. So you admit that you were probably negligent and——

Judge CLAIBORNE. I have said that all along, that I was careless, and I was negligent.

Senator HATCH. Did you raise the issue of the $2,000 fee with Mr. Watson, why it was so expensive?

Judge CLAIBORNE. I don't—no, I did not. I did hesitate when he handed me the bill. For a moment I thought it was too high. And immediately when I—it came to me, I thought it was too high. I thought of all the work that I went to just to gather up what he had, what he needed.

Then, of course, I thought about what he had told me when he wanted all of my income tax returns from 1973 up to 1979. And I asked him why. He said I couldn't possibly do this return without referring to the prior returns. That always leads you into other prior returns and just to be sure so that we can be exactly accurate and right in doing your return, I'd like to have your returns from 1973 up to 1979. And I took them down.

I thought, well, if he analyzed all of the returns that I took to him, that maybe his fee is not too high. I knew Mr. Wright's fee was in all probability lower than he was charging other people because of long friendship.

Senator HATCH. As far as you know, you were happy with the return also?

Judge CLAIBORNE. I don't think that entered in my mind. I don't remember having any impression about that. I just—the work that I did, getting the material together, and what he said about analyzing the returns is why I did not question him about it. I said very well.

Senator HATCH. There are a couple of other things—there are many other questions I have but we just can't do it in the 10 minutes that we have.

But there's something that has bothered me a long time, and I heard this mentioned by some of my friends in Nevada. As I understand it, there was an awful lot of media concerning your case and all of the facts and circumstances surrounding it throughout Nevada.

Would you say that's correct or incorrect?

Judge CLAIBORNE. It seems like for 6 years every time I've turned around, I've been staring into a camera of some kind.

Senator HATCH. I've also heard from people within Nevada that there's a tremendous conflict between Reno and Las Vegas people. Is that a fair characterization?

Judge CLAIBORNE. I think that's a fair characterization.

Senator HATCH. Well, did you move to move the trial out of Reno when they finally moved you as a Las Vegas citizen to be tried in Reno?

Judge CLAIBORNE. They took my matter from the Portland Grand Jury into the Reno Grand Jury.

Senator HATCH. Did you try to move for a change of venue?

Judge CLAIBORNE. We also asked to return the trial to Las Vegas and Judge Hoffman denied it.

Senator HATCH. I see. At this point, Judge Hoffman was the judge. OK.

Well, I just needed to ask you what you thought on those questions.

I think, you know, there are other areas that are bother—some to me. This business of cashing large checks and carrying large sums of money, I think, has caused you some grief through the years in these matters.

Just one last time. Why would you cash such large checks in casinos rather than putting them into your bank account where you could much more easily keep track of them?

Judge CLAIBORNE. The $37,500 check I cashed because I want to do a lot of remodeling. I did that because of a prior habit that I had had many years ago when I owned my old home, and that I hired people furnished from a labor pool, as I have said before, and those people always wanted paid in cash and at the end of the day every day. That's really why I did it.

Senator HATCH. Wouldn't they have taken a check for their work?

Judge CLAIBORNE. No, sir. I tried that. Many of them won't do it. So I——

Senator HATCH. You just paid them in cash?

Judge CLAIBORNE. They want the cash and they want paid at the end of the day.

Senator HATCH. All right, Mr. Chairman. That's all.

The CHAIRMAN. Senator DeConcini.

Senator DECONCINI. Judge Claiborne, just to follow up on Senator Hatch's just out of curiosity. These obviously then were not contractors that you were paying to work at your house?

Judge CLAIBORNE. No, sir.

Senator DECONCINI. They were employees of yours of a one—day stint? Some of them were for short periods of time that you had to pay by cash because you didn't know if they were going to show up again?

Judge CLAIBORNE. That's correct.

Senator DECONCINI. Of course you didn't pay any withholding or anything on any of their payments, or did you?

Judge CLAIBORNE. No, sir.

Senator DECONCINI. Now, Judge, going back for just a moment to the—isn't that a violation of the law in and of itself?

Senator HATCH. Not necessarily.

Judge CLAIBORNE. I don't know, sir.

Senator DECONCINI. You don't feel an obligation when you pay someone to work for you that you follow the withholding or Social Security or whatever the law may be?

Judge CLAIBORNE. I think this has something—I think the number—the period of time they work for you and the number that worked for you I think determines that.

Senator DECONCINI. So you felt you were doing nothing illegal by paying these people cash?

Judge CLAIBORNE. No; I did not.

Senator DECONCINI. Was the remodeling of such an extent that you needed $17,000? I mean were you paying—they must have been doing a lot of work for you.

Judge CLAIBORNE. Well, you mean, one man I hired to do—pour concrete, I decided I didn't want any maintenance. I wanted a maintenance free place. I hired him to pour all the concrete around the house and in the yard. I paid him I believe 30-some-odd hundred dollars.

Senator DeConcini. That was for the work and the concrete both?

Judge Claiborne. Yes, sir.

Senator DeConcini. You could not have purchased the concrete from a concrete supplier?

Judge Claiborne. I didn't try.

Senator DeConcini. OK. Judge, going back to my question about Sid Wyman and giving you $100,000, what did you do with that money?

Judge Claiborne. I put it in the cage at the Horseshoe.

Senator DeConcini. Did you ever take any of it out?

Judge Claiborne. Yes, sir.

Senator DeConcini. Is there any left?

Judge Claiborne. No, sir.

Senator DeConcini. What did you do with it when you took it out?

Judge Claiborne. I took out—in 1978, I took out—earlier, probably in 1975, I took out $10,000, and then at another time I took another $10,000 out.

Senator DeConcini. For what purposes?

Judge Claiborne. Gosh, I don't know at that time.

Senator DeConcini. Did you consider that income to you, that money?

Judge Claiborne. No.

Senator DeConcini. You did not report it on any income tax?

Judge Claiborne. No.

Senator DeConcini. Was there any interest paid on it?

Judge Claiborne. Interest paid by whom?

Senator DeConcini. For whoever who was holding the money. It was just held—where was it held, in a safety deposit box?

Judge Claiborne. Oh, I put it in the vault in the Horseshoe.

Senator DeConcini. In the vault. What records did you have of that money? Did you get a little passbook or a little receipt or something from the——

Judge Claiborne. No. I had represented the owner of this hotel for 30 years.

Senator DeConcini. So you had access to their vault?

Judge Claiborne. Well, I didn't have access to it, but I had——

Senator DeConcini. You could deposit money in it?

Judge Claiborne. I had a very close relationship. So they deposited the money for me. All they did was write the—in two envelopes and they wrote my name on it.

Senator DeConcini. Judge Claiborne, I'd like to pursue that but my time is short.

Senator Heflin read to you some very strong remarks you made about the organized crime strike force and how they were ruining—that you were not going to let them ruin Nevada, a few things like that, and you said yes, that's what you said, and you said yes and I was right, is that correct?

Judge Claiborne. That's correct.

Senator DeConcini. Would you still feel that way, that the strike force, or any strike force or criminal investigations there are unnecessary from the Federal Government's point of view?

Judge **Claiborne**. I have never felt they were not necessary, and I have never said entirely that they were unnecessary.

What I meant to convey and what I would convey here today is the manner in which they operated when they first came in Nevada. And I would like to repeat that I was not the first judge, I was in fact the last judge in the district of Nevada that had differences with these very same people.

I did not like their tactics. I thought they were destructive of everything that I believed in. And I said so. And in saying so, I brought, as the slang expression is, a lot of heat on myself. I know from those instances plus one other, when I asked the grand jury to investigate the FBI, that had I never made those remarks, had I never said anything about their activity, and had I not asked the grand jury to investigate the FBI, I would not be in a Federal prison today, and I would not be sitting here.

Senator **DeConcini**. Who told you that?

Judge **Claiborne**. I know.

Senator **DeConcini**. You know.

Judge **Claiborne**. My heart tells me that.

Senator **DeConcini**. Judge, were you aware that that organized crime task force was primarily investigating racketeering, slot machine thefts, home invasion, robbery, burglary rings which fenced stolen items with the aid of local police, construction shakedowns involving casino constructions which involved tax fraud, bookmaking, and loan sharking? Did you object to those types of investigations?

Judge **Claiborne**. I had no objection to those types of——

Senator **DeConcini**. Did you speak out in objection to the convictions of Gaspar Especial, Sam Menorite, Lawrence Newman or Vincent Spilato or Raphael Wacks? Did you feel that they were abused too by this task—by this organized crime task force?

Judge **Claiborne**. No. I think all of those convictions arose after, long after I made that remark.

Senator **DeConcini**. So, do you think that those convictions were part of the task force, or do you know, the organized crime——

Judge **Claiborne**. I really don't know, because, I mean, none of the cases that you've read to me were in my court.

Senator **DeConcini**. No; I'm not talking about being in your court. I'm talking about you were very, very critical of this Organized Crime Division Task Force, saying that they were ruining Nevada. Yet what I'm asking you did you speak forward and criticize them when they convicted these people?

Judge **Claiborne**. I think Las Vegas was picked.

Senator **DeConcini**. Was picked?

Judge **Claiborne**. Was singled out. This is my opinion and the conclusion that I came to. I'm joined by countless hundreds that to as sin cities, and they intended to come into Las Vegas and do what they said, clean it up. I didn't like the way they operated.

Senator **DeConcini**. Did you object to having the Federal Government there cleaning it up or doing investigations?

Judge **Claiborne**. I didn't object to the Federal Government doing an investigation in any kind of criminal activity as long as they exercised——

Senator **DeConcini**. As long as they met your standards?

Judge CLAIBORNE. No, not my standards. The standards of equal justice and protection of the rights of the citizenship. That's what I'm talking about.

Senator DECONCINI. And you obviously felt that they did not?

Judge CLAIBORNE. I know that they did not.

Senator DECONCINI. You know they did not from your heart?

Judge CLAIBORNE. I know of many instances that they did not, and I know from my heart that they did not.

Senator DECONCINI. Well, quite frankly, Judge, I can't disagree with anybody's objections of any prosecutor or investigative organization abusing their power. I think you have certainly raised the possibility that that occurred.

But it concerns me that because the criticism that you lodged, that you now say that you know that they were out to get you, and they did, and yet you only know that through your instinct. It takes more than that——

Judge CLAIBORNE. Oh, I don't know it from my instinct that they were out to get me. But, good God, Senator, I mean they have been pursuing me like a pack of wolves would pursue a sick caribou for 6 long years. That is not imagination on my part. I have been there. I know what they have done to me. I know what they've done to my family. I know what they have done to my life. So, don't say to me that I don't know what they have done to me. I know how I've——

Senator DECONCINI. And, of course, you feel innocent even though a jury found you guilty of violating the law?

Judge CLAIBORNE. I am innocent. I don't feel innocent merely; I am innocent. I have violated no laws of the United States.

Senator DECONCINI. Even though our judicial system has found contrary and you've been convicted by a jury of your peers?

Judge CLAIBORNE. Absolutely. Absolutely.

Senator DECONCINI. So these convictions hold no weight as far as you're concerned, and the system that you would——

Judge CLAIBORNE. I didn't say that. Senator, that's very unfair. That's an unfair question.

I didn't say that at all. What I said was that I did not receive a fair trial.

Senator DECONCINI. And you appealed that objection to the fair trial, correct?

Judge CLAIBORNE. Yes, I did.

Senator DECONCINI. And you appealed it where, to the ninth circuit?

Judge CLAIBORNE. I appealed it to a special panel picked by the Chief Justice of the United States.

Senator DECONCINI. A special panel, and they denied that your contention that you did not get a fair trial?

Judge CLAIBORNE. That's correct.

Senator DECONCINI. And that you object to or felt that that was unfair?

Judge CLAIBORNE. I can't say that I feel that it was unfair. But I mean they didn't give much attention to it, the appeal.

I would invite your attention, if you will, sir, to the dissenting opinions that were written by the regular ninth circuit judges, at least three of them, on my petition for rehearing. And I would advise you, sir, in answering your question to this, if I might, that in their opinion they refer, one of our points was that we had been deprived.

Senator DeConcini. That you had been what?

Judge Claiborne. Deprived.

Senator DeConcini. Deprived. That was one of the dissenting opinions?

Judge Claiborne. The Jenks Act material.

And the regular panel said that the judge's decision not to give us, the Jenks Act statement was correct. The only way they could have done that is by looking at them.

The opinion insinuated at least that they had reviewed them and made that—came to that conclusion from a review.

Judge Ferguson sitting in the ninth circuit inquired of the clerk of the ninth circuit and found that those judges who made that finding, all three of them, none of them had ever read the Jenks Act material which we were claiming was not given unto us and was appropriate Jenks Act material, and had never even opened the envelope, and from the time the material had come in, it had remained in the clerk's office.

Now, if that's judicial integrity then I have another different definition to it.

Senator DeConcini. Mr. Chairman, I just say it, but yet this was a panel, an appeals process that was followed, and you happened to lose. They happened to come down, a majority, feeling that you were not deprived of any due process or constitutional rights, isn't that correct, Judge?

Judge Claiborne. I don't think I just happened to lose. I think that that was written before they arrived——

Senator DeConcini. So you think it was fixed, you think it was fixed in the courts against you?

Judge Claiborne. No, I don't think it was fixed necessarily in the court against me.

But I say this: that if any other citizen had been sitting where I'm sitting, I don't think that they would be here. But they didn't want to be accused of whitewashing one of their own. And they weren't as energetic in protecting my rights as I think they would have been in the ordinary defendant.

Senator DeConcini. Thank you, Judge.

The Chairman. Senator DeConcini's time has expired. There is a vote on the Senate floor. Senator Simpson's motion to table Senator Kasten's motion to proceed on product viability, so we will take a 15-minute recess.

[Short recess.]

The Chairman. The committee will come to order.

Judge, we will request you to return to the witness stand. Once again I remind you that the oath that you took is still binding.

Judge Claiborne. Yes, I do.

The Chairman. The last questions were propounded by Senator DeConcini. Senator Warner, you have not had a second round?

Senator Warner. Not at this time, Mr. Chairman.

The Chairman. Not at this time.

Senator Pryor.

Senator Pryor. Mr. Chairman, I have just a few questions.

Judge, I know that you must be very tired right now, and I think this is probably the last time you'll hear from me. And I'm going to proceed on this question very gingerly, and I want you to know I know this is not a Domestic Relations Court.

But you testified, I believe in early 1982, that you and your wife, or former wife, were going to a furniture store, and you stopped by Mr. Watson's office. Is this correct?

Judge CLAIBORNE. No. We were on our way to a furniture store when we left her house, my ex-wife, when we left our house, her house, she said, she had some papers. She said I have to deliver some papers to my accountant. Do you mind running me by and I said of course not. And I drove her to Mr. Watson's office.

Senator PRYOR. That was in early 1982, I think, January the 2d or 3rd, or something?

Judge CLAIBORNE. 1981, 1981. Yes, 1981.

Senator PRYOR. 1981. Pardon me. All right.

Now, at that time, was this lady your former wife or were you at that time married?

Judge CLAIBORNE. No. It was my former wife.

Senator PRYOR. Former wife.

Judge CLAIBORNE. At that time.

Senator PRYOR. Now, would there have been any reason— this line of questioning, I don't mind telling you where I'm going with it. I'm trying to ascertain why a distinguished criminal attorney and a U.S. District Judge and man of knowledge, et cetera, would go and see Mr. Watson, just to be honest with you, and go in, especially to ultimately retain him. That is something that I find very, very strange.

Now, I'm going to ask this question: was there any reason for your wife, your former wife at that time, to more or less entice you to go and see Mr. Watson?

Judge CLAIBORNE. Oh, no.

Senator PRYOR. There was no reason there?

Judge CLAIBORNE. Oh, no. She was, I think, she wouldn't have approached it in that manner. She would have mentioned it, I'm sure, before she went up and invited me to go up with her in all probability. Absolutely not. This is the finest human being you've ever seen, and she would never do that.

Mr. Watson had done her return I believe his office had maybe at least 1 year before this, and possibly 2 years before then.

Senator PRYOR. All right.

Judge CLAIBORNE. I know at least 1 year.

Senator PRYOR. All right. I will move then away from that line of questioning and go to Mr. Wright, into that questioning on this point.

You knew him for about 30 years, he had done your tax work, your tax preparations. Evidently you had great trust for Mr. Wright and evidently he for you.

Now, why do you think that Mr. Wright contradicts and disputes your testimony? Do you believe that Mr. Wright just didn't remember it? Do you think that possibly because of his surgery and illness he may have had a lapse of memory, or do you think that there was another reason? If so, I would like your own impressions of this.

Judge **Claiborne**. As this thing has gone along, I've formed several conclusions about it. And they are constantly changing by the events of the first trial, the second trial and, of course, now this trial.

When I read the lady's affidavit that's been received here today, it established, I believe, what the first conclusion was, and that was that he was so busy, and she said in her affidavit that he was overextended. And I'm sure that's true.

And I believe in his haste to take care of his business that, in all probability, he lost, misplaced in some other file the April 11 letter. And when he saw a copy of it, when my lawyers first went to see him, the first expression that he made was, my God, all of my clients now will be audited. That bothered me because, at that point in time, and this is rather early and before the trial, he seemed far more concerned about how this trial was going to affect him personally than he did about my business.

Senator **Pryor**. Judge, at that time, did you consider Mr. Wright felt himself to be vulnerable?

Judge **Claiborne**. I sure did. I recognized the fact that he had been very ill, that I thought maybe he was not strong enough physically or mentally to argue with them or to take a strong position where he would be in somewhat of an adversary role, and that he went along for that purpose. I couldn't believe that he would just say to the FBI agent and the IRS agent you may go to my office and take my files and go through them. I just could not understand why he would do that.

So I attribute the fact that he did do that to his ill health, that I just don't have the strength mentally or physically to fight with these people and I don't want to be bothered with them.

Senator **Pryor**. Did you feel that at any time he was being induced by the Federal Government to make contrary statements to what you were making or contradictory positions than you were taking?

Judge **Claiborne**. I don't know whether his position was induced by agents of the Federal Government or whether they were self-induced. I've analyzed that also, and he has been—well, in fact, was at that time, and I think now, the State Director of the National Association of Public Accountants. He had held every office in the Nevada chapter that you could hold in it, and on the Board of Directors or Trustees what they have. And he enjoyed that prestige, I'm sure. He didn't want to see anything happen that would damage his prestige. And if he admitted that he received the letter of April the 11th, then he has to admit that he is negligent in the preparation of my returns if he went to other documents, which he obviously did.

And he comes out with his reputation damaged and soiled, and everything that he has worked for in jeopardy. And I think those thoughts were running strongly through his mind. Otherwise, he wouldn't have consistently taken the position, after first admitting it, that he had never seen the letter.

On the other hand, I also tried to evaluate his conduct at the first trial. My lawyer asked him these questions, showed him a copy of the letter of April the 11th that I had sent him, and asked him if he had ever seen it before, and he said yes. And he asked him if he had had it in his possession during the preparation of my taxes, and he said that he had. He asked him to read the letter into the record, and he read the letter into the record. He said when you prepared Judge Claiborne's return, did you consider the information contained in that letter? And he said yes, I did.

This was cross examination. They then recessed——

Senator PRYOR. Mr. Chairman, I have no further questions, and I know you want to bang the gavel, but if he could complete that statement——

The CHAIRMAN. The Judge can complete his answer.

Judge CLAIBORNE. We had a recess. And after the recess, he came back in, and Government counsel handed him the letter again and said when did you first see this letter? And he said when Mr. Goodman brought it to me in my office and showed it to me.

I'm a veteran trial lawyer and, of course, I get suspicious when witnesses come back after a recess and they've had an opportunity to talk to their lawyer. And then abruptly change their testimony, as he did. And so that's run strongly through my mind to the effect that it wasn't self-induced; that maybe it was a combination of self-inducement and fear of them. But I do know that he was constantly with them and enjoying their company, and that always bothered me.

Senator PRYOR. Thank you, Judge Claiborne.

The CHAIRMAN. Senator Rudman, do you——

Senator RUDMAN. Mr. Chairman, let me ask the Chair a question.

Is it the Chair's intention at the conclusion of the examination of Judge Claiborne that we are going to retire as a committee and discuss the question of scope while the parties are still here and then come out and announce that decision?

The CHAIRMAN. Yes, I would like, if it's possible, depending on how much time Mr. Goodman and Mr. Chabraja require for redirect.

Mr. GOODMAN. As far as I'm concerned, Mr. Chairman, I don't anticipate that my questioning will take very long. I'm just going to try to develop a flavor and a sense of what the man is really like, and be able to do that quickly, and I'm going to stop.

The CHAIRMAN. Then it would be the intention of the Chair to, as soon as these questions are over, to retire and make a question on it, to discuss that question on the scope of the investigation.

Senator RUDMAN. And to ask the parties to stay until the——

The CHAIRMAN. By all means.

That requires that we use the utmost economy of time at the present moment.

Senator RUDMAN. I asked the question for a particular reason, Mr. Chairman, and I say this very respectfully. I don't direct this at anybody in particular. I just make a general statement.

This witness has been cross-examined. He has been examined by his counsel, cross-examined by a very skilled lawyer representing the House, subject to examination now by 13 members of the U.S. Senate. And I could think of 20 ways to ask the same question, 21 different ways. And there are some other things I'd like to ask Judge Claiborne I'm kind of curious about. But I'm really not sure that it's going to produce any new evidence. And so, speaking for myself, I have no further questions now, nor will I have any other questions irrespective of what anybody else adduces.

I would like to get to deciding the scope question because I expect, Mr. Chairman, that bell is going to ring, we're going to have votes, the House is going to have votes, and I think we've got some very important matters to discuss. And I'm sure some members have some important questions. I'm not talking about that. But I'm just going to withdraw from asking questions and hope we can get to the important issue before this day is over.

The CHAIRMAN. Senator Rudman passes.

Senator Pryor then—Senator Pressler.

Senator PRESSLER. You promoted me for just a moment. You complimented me.

Judge, my closing round of questions, and let me say that I disagree with what Senator Hatch said about an assumption that most Senators don't read their tax returns. I think in my judgment most Senators read their tax returns very closely. Indeed, I have in past times made mine public and so forth.

But would it be your judgment that most Federal Judges don't read their tax returns?

Judge CLAIBORNE. I have no basis for that. But I'll tell you what I did one day just to see. There was a number of lawyers sitting at a table having lunch after I had been convicted. And I went in, and I shook hands with all of them and I hadn't seen them in some time. And I said, now, I want you guys to tell me, how many of you when you get your return read it, study it, and thoroughly look at it? And there was at least seven lawyers sitting at this big table. And one of them raised his hand, and then he smiled, and he said I do my return myself.

So, well, I don't think it's——

Senator PRESSLER. My experience has been different from yours. The people that I talked to do look at their tax returns, particularly if there's something extraordinary. If my tax accountant would say I've got a $20,000 refund this yar, I'd certainly—or course, as you said, you asked about it, but I'd certainly look at it. I would read the ink off it, so to speak before I sent it in.

But be that as it may——

Judge CLAIBORNE. I will from hereon join you. [Laughter.]

Senator PRESSLER. Now, you sort of felt very strongly that you are targeted or that you are—that branches of Government are after you. But, as one of my colleagues pointed out, not only did a jury convict you—let's say that the jury was influenced by the prosecutors, but on appeal to a group of judges, they upheld that. Now, there was a dissent. But certainly those judges would be on your side if we think there are sides to this thing as opposed to the prosecutors.

Wouldn't that be true?

Judge CLAIBORNE. Well, under ordinary circumstances, it would be true. But it isn't true in my case.

What happened was that we brought a motion to dismiss because of governmental misconduct. And we supported it with everything that we could find. When that motion was heard by the court, we had asked for an evidentiary hearing, which he denied, and at that hearing he held this motion up and he dropped it on the bench and he referred to the motion as garbage.

We had no evidentiary hearing as to governmental misconduct in my case.

Senator **Pressler**. But what I'm asking about is the motive.

Now, let's say that the Government prosecutors had a motive, but the judges wouldn't—they'd be on the other side, wouldn't they? If prosecutors are out to discipline judges and to put them in their place, the Court of Appeals, the court you went to for your appeal, they would have been on your side, wouldn't they, according to that theory?

Judge **Claiborne**. I don't think your theory is correct because, ordinarily I might think beforehand it might be correct, but since this has come up, Federal Judges have put a lot of distance between me and them.

Senator **Pressler**. OK. All right.

Now, let me ask another question, just one final——

Judge **Claiborne**. I haven't seen anybody very anxious to straighten out this situation.

Senator **Pressler**. One final question about this cash business. I know it's been driven into the ground.

But when you pay cash to workers, don't you have to pay some Social Security or Federal—the Federal insurance and so forth?

Judge **Claiborne**. I don't think so. I don't think so. I think——

Senator **Pressler**. They're like independent contractors. In other words, you can pay cash to people on a continuing basis without reporting to Social Security and paying the Social Security portion of it?

Judge **Claiborne**. Well, I think there's something about the number of employees that you have working for you.

Senator **Pressler**. OK. But did you get receipts for this? I mean would you be able to substantiate spending this much cash as you've said today?

Judge **Claiborne**. Would I be able to?

Senator **Pressler**. Yes.

Judge **Claiborne**. Yes, I think so, as far as some of them. Not the individual employees I would not. The independent contractors that I used, I would be.

Senator **Pressler**. OK. Just in managing that, to carry $37,000 worth of cash, or $28,000 worth, how do you do it, is it in thousand dollar bills? Do you need a——

Judge **Claiborne**. Oh, no. Oh, no.

Senator **Pressler**. Can you carry that much cash in your pocket?

Judge **Claiborne**. No. A hundred—oh, yes you can carry $37,000 in your pocket easy.

Senator **Pressler**. Well, what are they in, thousand dollar bills or five——

Judge **Claiborne**. Hundred dollar bills, yes.

Senator **Pressler**. That would be 37 bills I guess.

Judge **Claiborne**. It would be more than that, wouldn't it?

Senator **Pressler**. 37 one thousand dollar bills? Are they thousand dollar bills?

Judge **Claiborne**. About that.

Senator **Pressler**. Then that would be 37 bills.

But that leaves me fascinated.

Let me ask you just one final question: now, yesterday, under questioning, I think by Senator Rudman who has already gone through this, but you were so good at recalling details of the cases that you had a number of years ago, and you have such a good memory on those cases. And yet apparently during that 19-day period, the 1979 legal fee income, between the time you wrote the April 11th letter and the time of the conversation with Mr. Wright, less than 3 weeks later, you had forgotten.

How can someone who had such a brilliant memory of a recall of cases forget something like that in 19 days?

Judge CLAIBORNE. Very simple. The Senator furnished us a list of the cases. I had an opportunity to glance at them and review them. He had a list of eight cases.

Senator PRESSLER. But you had a lot of very good detail, very detailed memory of those cases once you got into them.

Judge CLAIBORNE. I had read them before I testified, looked at them.

Senator PRESSLER. Now, again, did you ever question the absence of the schedule C in your 1980 tax return when you flipped through the return with Jerry Watson and you were looking for it?

Judqe CLAIBORNE. Never.

Senator PRESSLER. And there was a schedule missing.

Judge CLAIBORNE. No, sir. I never discussed it with Mr. Watson or anybody else.

Senator PRESSLER. OK. Thank you.

The CHAIRMAN. Senator Gore?

Senator GORE. Thank you, Mr. Chairman.

The CHAIRMAN. Once again, Senator Gore, let me just plead with the committee not to ask questions that have been previously asked.

Senator GORE. Yes. I don't believe I have done that.

The CHAIRMAN. I am not directing that to you. That is an appeal to the committee at large.

Senator GORE. OK, fine. I will try not to do it this time either, Mr. Chairman.

Judge CLAIBORNE, around the time you took the bench, this was a major change in career, obviously. I am trying to get a clearer picture in my own mind of exactly what happened here. Is it fair to say that in your life you were going through a lot of changes around that time?

Judge CLAIBORNE. In my life?

Senator GORE. Yes.

Judge CLAIBORNE. No.

Senator GORE. You took the bench in 1978. Were there any dramatic changes in your family life around that time?

Judge CLAIBORNE. No.

Senator GORE. What I am getting at is, did you have a divorce about that time?

Judge CLAIBORNE. No. It was earlier in the year, in February 1978.

Senator GORE. And was that the second one in less than a year?

Judge CLAIBORNE. I don't know. It would have been the second one within 2 years.

Senator GORE. No, it may be seen as marginally relevant in one sense. But in another sense, I am trying to figure out what happened here, if, in fact, you had 30 years of distinguished service as a lawyer.

The court records in Nevada indicate that you divorced at the end of May 1977, and then divorced again in April of the following year, and then went on the bench. Then sold two houses and purchased another.

There seems to be a lot of activity all around this same time. Around the same time you also changed your pattern of putting money in the bank and started cashing checks in casinos. And it just seems to me from this pattern that around the time you took the bench you were going through a lot of changes.

Is that a fair conclusion?

Judge CLAIBORNE. No, I don't think so.

Senator GORE. All right. Well, that is a——

Judge CLAIBORNE. I can't think of any changes that I was going through. I was living the same way I always had lived, you know.

Senator GORE. All right. Now I asked you during the first round about your 1979 tax return and your relationship with Mr. Wright. I would like to shift now to your 1980 tax return and your relationship with Mr. Watson.

You have testified here about how you met Mr. Watson and how his telephone conversation impressed you. Mr. Watson testified that the fee you negotiated with him was to based at least in part on how successful he was in reducing your expected tax obligation. A kind of contingent fee. The lower he could reduce your obligation to pay taxes, the more money he would receive in fee.

Is that the way you remember it?

Judge CLAIBORNE. Well, I remember it as a mental process of his.

Senator GORE. Yes.

Judge CLAIBORNE. I don't remember him saying it was any conversation between the two of us to that effect, because it was not.

Senator GORE. What was your understanding of the fee?

Judge CLAIBORNE. I had no——

Senator GORE. Let me preface the question by saying again, that he testified here not simply that it was a mental process of his. He testified that the fee you would pay him upon the completion of your tax return was to be influenced by how successful he was in reducing your tax obligation.

Now is that the way you remember it, too?

Judge CLAIBORNE. No, I did not hear that that way. I will not dispute it, for the simple reason you, in all probability, have the record.

But I will say this. I never had any conversation with him at all about the fee except on the day that I wrote him the $200 check as a retainer.

Senator GORE. Did you ask him what his fee was going to be?

Judge CLAIBORNE. No, I did not.

Senator GORE. You weren't interested?

Judge CLAIBORNE. Well, I figured that he would charge me a fee commensurate with his work. And I asked him, I said, do you want a retainer? And he said, yes, I do. And I said, or he may have said, not necessarily. Anyway, I wound up giving him a check for $200 as a retainer.

Senator GORE. Were you mildly curious about how much money you were going to have to pay him? Or did you hire him with no understanding at all about how much you were going to pay him?

Judge CLAIBORNE. I did not have any understanding as to what the fee would be. And I naturally assumed that it would be reasonable, commensurate with his work.

Senator GORE. Now he has testified, as I just noted, that it was to be commensurate with his work, and specifically it was to be commensurate with how much he could reduce your tax obligation.

And if he is correct in that testimony, then his fee would be based, in part, on the final tax bill which you owed according to his calculations.

Now when he first presented you with the completed tax return, it would therefore be of interest in calculating his fee how much he had been able to reduce your taxes.

Did you look at how much tax you owed when he presented you with the completed return?

Judge CLAIBORNE. Yes.

Senator GORE. Well, you testified yesterday that you did not.

Judge CLAIBORNE. Well, I said—no, no. I said I had looked and I saw that I was entitled to a refund. Remember?

Senator GORE. You said that today. Yesterday, when you were asked whether or not you examined your tax obligation, you said you did not. I believe my memory of that is correct.

Judge CLAIBORNE. I did not. I looked and I saw. As far as the tax obligation, on the refund, I did not, Senator. I saw that I was entitled to a refund, and I said to him—so, naturally, if I was getting a refund, I already knew.

I saw that I was getting a refund, and that I had no tax obligations under the return. So that is when I went into the conversation with him about how he accomplished that. That was the question: how did you accomplish it?

Senator GORE. What fees did you pay Mr. Watson for your 1981 and 1982 returns, do you remember?

Judge CLAIBORNE. I have no idea.

Senator GORE. Do you have a rough estimate?

Judge CLAIBORNE. No, sir, I really don't.

Senator GORE. Were they based on the amount of tax savings——

Judge CLAIBORNE. No.

Senator GORE [continuing]. He was able to incur?

Judge CLAIBORNE. No. It was less than the first year, I know that.

Senator GORE. So you are telling us now that Mr. Watson was incorrect when he told us that the fee was to be based contingently on how much he was able to save you in taxes?

Judge CLAIBORNE. We had no conversation with him about fee; and if he has testified to that, he is absolutely wrong.

Senator GORE. All right. Now in that first conversation with Mr. Watson, he testified that you briefly discussed the cost of your Rolodex.

Do you remember telling him what you believed the cost of your Rolodex was?

Judge **Claiborne**. I didn't have one.

Senator **Gore**. So you are telling us that Mr. Watson is mistaken on that point as well?

Judge **Claiborne**. Absolutely wrong.

Senator **Gore**. Did you discuss with Mr. Watson the estimated cost of all of your accumulated telephone numbers?

Judge **Claiborne**. No.

Senator **Gore**. Well, again, did you hear him tell us that you did?

Judge **Claiborne**. I don't know whether I did or not, Senator, frankly.

Senator **Gore**. Well, you were sitting right there.

Judge **Claiborne**. Yes, I know. Some things I don't hear over there.

I don't recall that I heard him testify that I put a cost, figure on anything, because we did not.

Senator **Gore**. Now you saw this document prepared in 1983 by Mr. Watson which includes all of the items he used in arriving at the loss on the sale of the house and—I mean, the law firm. Correct? You have seen this document?

Judge **Claiborne**. Yes, sir.

Senator **Gore**. Did you discuss that with him before he prepared it?

Judge **Claiborne**. Before he did what?

Senator **Gore**. Before he prepared it?

Judge **Claiborne**. No. I asked him to present to me in writing exactly what he did, what his procedure was, how he arrived at his—I think I put it, I want you to put in writing how you arrived at your destination in this thing.

Senator **Gore**. Well, I believe that question in fact was asked earlier. If I could complete this just briefly, Mr. Chairman.

When you heard Mr. Watson—did you hear Mr. Watson responding to the questions I and others asked him about how he arrived at these numbers?

Judge **Claiborne**. Yes, sir, I think so.

Senator **Gore**. If you were sitting on this side of the table listening to Mr. Watson's testimony that the figure for goodwill came from spontaneous combustion; that is, that he just imagined it out of thin air, would you believe that testimony, or would you conclude instead that he, in fact, did have some conversations with you about how to value these different items?

Judge **Claiborne**. Well, you are asking me what you should believe?

Senator **Gore**. What a reasonable person should believe.

Judge **Claiborne**. I will tell you what happened. What happened was that he, when we talked he opened the conversation, and he had talked to someone, as I have previously testified to. That his words were, I hear that you took a shellacking when you went on the bench. That you really took heavy losses because you couldn't sell your law practice.

And I said, yes, I did. He has testified here that he got that information from Mrs. Quintana. And then he began to ask me questions about it. And he said, I would like to hear about it. And I told him the whole story.

That I negotiated with some people to sell it, that I thought I had it sold, that finally I didn't have, and I just almost had to walk away from it.

And in the course of me telling him what happened I told him what I did with my library; I gave some of the books away, wound up selling some, giving some both to the associates that I had employed by me at that time, and the rest of the books I let just lawyers come in and take what they wanted.

And I told him all of this story. And that is all the conversation we had except at the end; and he said, I think, he said I think, he said I am going to work on this. He said, I am going to work on this. He said, I think there is a way that you can take some of those losses, he said.

I don't know that I replied. And I left, and the next thing I hear from him, I get a letter and he says that—and wanted to know if I wanted him to do my return.

I can candidly state that when we had this conversation that I had not hired him as my accountant. In fact, I didn't until after I received his letter. So that is the way it developed.

The CHAIRMAN. The time of the Senator has expired.

Senator Warner, you passed.

Senator WARNER. I will just take one question when the opportunity arise.

The CHAIRMAN. All right, this is your opportunity.

Senator WARNER. Thank you.

Judge, I have read with considerable interest the decision, *United States* v. *Claiborne*, 765 Fed. 2d, 784, by the Federal Circuit Court of Appeals reviewing your conviction.

Three judges sat on that court, Wilbur F. Pell, Jr., senior circuit judge for the 7th circuit; J. Edward Lombard, senior circuit judge for the 2d circuit; and Robert H. McWilliams, senior circuit judge for the 10th circuit—sitting by designation—and you were represented by your very able counsel, Oscar B. Goodman.

This is 21 pages in length, this opinion. And by way of personal reference, I was once law clerk to a Federal circuit judge, so I have some interest in this matter from the standpoint of recollections I have.

I think it seemed to me to be a very fair, well-reasoned opinion, and wondered if you had any views about it. Because those three senior circuit judges, probably 50 years of experience on the bench, found no basis on which to reverse the convictions on counts 5 and 6.

Judge CLAIBORNE. I have complaints about it.

Senator WARNER. Very well.

Judge CLAIBORNE. You want to hear them?

Senator WARNER. Subject to the patience of my committee, I would like to hear your views on it.

Judge CLAIBORNE. To save time, I am not happy with it. The main fault that I have with it is Judge Pell wrote the opinion, and on a major issue in this case 9 days beforehand he filed an opinion going the other way.

Senator WARNER. In this case?

Judge CLAIBORNE. Yes; in this case.

Senator WARNER. How do you know that fact? That ordinarily is a very secret process.

Judge CLAIBORNE. We found it. It was published. Eventually published after this opinion came down.

Senator WARNER. Could someone provide me with that opinion?

Mr. GOODMAN. I believe that perhaps there is a misunderstanding. I think what the judge was saying was that Judge Pell wrote an opinion in another case on a similar issue where he went the other way.

The CHAIRMAN. Now, Mr. Goodman——

Judge CLAIBORNE. I thought that is what I said.

The CHAIRMAN. Judge Claiborne is testifying.

Senator WARNER. I understood him to say the other, but anyway. So in a case with similar facts he wrote an opinion to the contrary?

Judge CLAIBORNE. Went the other way on it, yes.

Senator WARNER. Anything else about this opinion troubles you?

Judge CLAIBORNE. A lot of it, but I don't remember it exactly.

Senator WARNER. Now just a last point. In a spirit of total fairness with you, you will have the opportunity with your counsel, eventually, but is there anything that you wish to tell this committee that you feel you have not had an opportunity to give us your opinion which would be in your interest? Any thought prompted by the questions of my colleagues?

Judge CLAIBORNE. Within the bounds of the ruling of the committee, I can't think of anything.

Senator WARNER. All right. I thank you.

The CHAIRMAN. Senator Bingaman.

Senator BINGAMAN. I have no further questions, Mr. Chairman.

The CHAIRMAN. Does any member of the committee have any questions?

The VICE CHAIRMAN. I have a brief question.

The CHAIRMAN. Senator Sarbanes?

The VICE CHAIRMAN. Judge Claiborne, I just wanted to ask again, on exhibit 36, the letter that you sent to Mr. Wright of April 11, 1980. Exhibit 36.

Judge CLAIBORNE. I don't have any exhibits, sir.

Yes, sir.

The VICE CHAIRMAN. And which you state—now that is the letter you prepared, as I understand it, at your home early in the morning of April 11; is that correct?

Judge CLAIBORNE. That is correct.

The VICE CHAIRMAN. And then you brought it into your office and sent it over to Mr. Wright's office; is that correct?

Judge CLAIBORNE. That is correct.

The VICE CHAIRMAN. Now in that letter you say in the first sentence of the second paragraph: "Fees received during 1979 for practice before I became a judge are $41,073.93." Is that correct?

Judge CLAIBORNE. That is correct.

The VICE CHAIRMAN. Did you calculate that that morning? How did you arrive at that figure?

Judge CLAIBORNE. I arrived at it by taking the slips out of the envelope and adding them up.

The VICE CHAIRMAN. So as I understand it, there were 14 slips, is that correct? Fourteen fees that you would have had to list and add up?

Judge CLAIBORNE. I don't know, sir. I don't remember how many slips there were, but the total amount was $41,073.93.

The VICE CHAIRMAN. Well, now in your diary, which is exhibit 22, there are 14 fees listed. I take it at this point you weren't working from your diary, you were working from slips.

Judge CLAIBORNE. From the slips.

The VICE CHAIRMAN. And later those slips were entered in your diary, is that correct?

Judge CLAIBORNE. Correct.

The VICE CHAIRMAN. So what you would have had to do that morning is list 14 items representing your fees and add them up in order to get this figure. You calculated that figure that morning, did you not?

Judge CLAIBORNE. Yes; I did.

The VICE CHAIRMAN. So, in effect, you put it together by looking at the slips and putting down each of the fees you had received in 1979 and adding them up for this total $41,073.93?

Judge CLAIBORNE. Yes.

The VICE CHAIRMAN. And yet a month later, when you did your financial disclosure statement, you listed $22,000 in fees; is that correct?

Judge CLAIBORNE. That is correct.

The VICE CHAIRMAN. Now I have one other question about the opinions to which you have made reference in terms of the dissents that were filed by Judges Ferguson, I think, and Rhinehardt, and one other member of the ninth circuit.

Now those dissents, as I understand it, were simply from a refusal by the ninth circuit to have a rehearing in your case en banc; in other words, with all of the judges of the ninth circuit sitting. Is that true?

Judge CLAIBORNE. That is correct.

The VICE CHAIRMAN. And what was the vote in the ninth circuit, if you recall, on simply deciding not to have a rehearing in front of the entire bench?

Judge CLAIBORNE. I do not know. That is information they will not give out. We asked them.

The VICE CHAIRMAN. Well, now, in his opinion Judge Rhinehardt, in his dissent, Judge Rhinehardt states:

> Our vote on the en banc call reveals the 19 members of this Court out of a then total of 25 concluded that it was proper for them to vote on the question whether or not Judge Claiborne's appeal should be given en banc consideration. Only six thought they were required to recuse themselves from participating in that decision.

So as I understand this, there were 25 members of that court; 6 recused themselves, leaving 19 who concluded that it was proper for them to vote on the question whether or not Judge Claiborne's appeal should be given en banc consideration.

And what we have in the record is 3 out of that 19 who apparently concluded it was proper to vote filing a dissent. Is that correct?

Judge CLAIBORNE. Yes. What to me is significant about it, Senator, is I have been told that this is the first time that written dissent had ever been filed for petition for en banc hearing, and three were filed in this case. To me, that is highly significant.

The VICE CHAIRMAN. I understand that. But it was 3 out of 19 judges who apparently concluded that it was proper for them to vote. There are 25 judges on the ninth circuit.

Judge CLAIBORNE. Six of them disqualified themselves.

The VICE CHAIRMAN. Six recused themselves and said we are not going to pass on this. Nineteen passed on whether you are entitled to a rehearing, and of the 19, three registered a dissent.

The CHAIRMAN. Senator Heflin.

Senator HEFLIN. Let me just ask you one or two questions. When you went on the bench, you did go to some schools for Federal judges at which other district judges who were assuming the bench were there, did you not?

Judge CLAIBORNE. No; I did not, Senator.

Senator HEFLIN. You didn't go to any school?

Judge CLAIBORNE. I went on in September and those schools are conducted, I believe then it was twice a year, and so it was no school available, and I went right on the bench and went to work.

Oh, they did send me to a Sentencing Institute. I forgot. The first 5 days I was a Federal judge I spent at the Sentencing Institute.

Senator HEFLIN. In your associations, either in judicial conferences or other meetings with judges, did you ever discuss with judges what they did about their law practice, whether they sold it and what tax treatment that they gave to their——

Judge CLAIBORNE. No; I did not.

Senator HEFLIN. OK. Now let me ask you this. You have testified about your education. You went to Cumberland Law School. Was it a 1-year, 2-year, or 3-year law school at the time?

Judge CLAIBORNE. Two-year school at that time.

Senator HEFLIN. Two-year at that time.

Did you take any courses in income tax at that time?

Judge CLAIBORNE. No, sir.

Senator HEFLIN. Well, in your schooling at Ouachita Baptist, I believe, is that the——

Judge CLAIBORNE. Ouachita Baptist University now.

Senator HEFLIN. Did you take any courses in income tax?

Judge CLAIBORNE. No, sir.

Senator HEFLIN. You never had any formal courses or schooling in income tax?

Judge CLAIBORNE. No, sir.

Senator HEFLIN. I believe that is all.

The CHAIRMAN. Mr. Goodman.

Mr. GOODMAN. Thank you, Mr. Chairman.

REDIRECT EXAMINATION

Mr. GOODMAN. Judge Claiborne, the hour is growing late, and I would like to concern ourselves with areas that really would not be repetitive, but hopefully will be explanatory.

You testified that you were given a gift of $100,000 by Sid Wyman, is that correct?

Judge CLAIBORNE. That is correct.

Mr. GOODMAN. And when you got the money you did what with it?

Judge CLAIBORNE. I deposited it in the bank.

Mr. GOODMAN. When you initially got the money from Mr. Wyman, didn't you——

Judge CLAIBORNE. Put it in the Horseshoe.

Mr. GOODMAN. And that was in a safety deposit box there?

Judge CLAIBORNE. That is correct.

Mr. GOODMAN. Did you have access to it?

Judge CLAIBORNE. Sure. Yes.

Mr. GOODMAN. Did you remove certain of the moneys over the years that it remained in the Horseshoe box?

Judge CLAIBORNE. Yes. I have said I removed $10,000 twice.

Mr. GOODMAN. And it was clear that you were not drawing interest on that money while it was at the Horseshoe, isn't that right?

Judge CLAIBORNE. That is correct.

Mr. GOODMAN. Now there came a time when you withdrew the balance of the funds from the Horseshoe, did you not?

Judge CLAIBORNE. That is correct.

Mr. GOODMAN. When was that?

Judge CLAIBORNE. That would have been the last day I was in practice.

Mr. GOODMAN. And how much money did you take out of the Horseshoe?

Judge CLAIBORNE. $80,000.

Mr. GOODMAN. What did you do with it when you took it out?

Judge CLAIBORNE. I took $75,000 to the bank and deposited it, in the First National Bank.

Mr. GOODMAN. And of course you got a receipt for it?

Judge CLAIBORNE. That is correct.

Mr. GOODMAN. And after you deposited some $75,000 in currency at a bank in Las Vegas, NV, what did you do?

Judge CLAIBORNE. I wrote a check to the Internal Revenue Service for some $74,000-odd dollars.

Mr. GOODMAN. And the purpose of that check was what?

Judge CLAIBORNE. To pay the tax deficiency in the year 1977.

Mr. GOODMAN. All right. Now would it be fair to state that money wasn't of great concern to you while you were a practicing lawyer?

Judge CLAIBORNE. No; it was not.

Mr. GOODMAN. As a matter of fact, there was one incident where you had a cashier's check in your possession, isn't that right?

Judge CLAIBORNE. That is correct.

Mr. GOODMAN. What was the amount of the cashier's check?

Judge CLAIBORNE. $50,000.

Mr. GOODMAN. And when did you receive it?

Judge CLAIBORNE. I believe in the early part of 1977.

Mr. GOODMAN. And where did you put the cashier's check?

Judge CLAIBORNE. I first put it in an ornate wooden box that I kept on my desk, and then later on I took it out of there one day and put it in the center drawer of my desk.

Mr. GOODMAN. Would it be fair to state that that cashier's check wasn't drawing any interest while it was setting in the ornate box or in your desk, isn't that right?

Judge CLAIBORNE. That is correct.

Mr. GOODMAN. And how long did it set there?

Judge CLAIBORNE. A year and a half.

Mr. GOODMAN. How were you able to ascertain that?

Judge CLAIBORNE. I kept a record of it.

Mr. GOODMAN. All right. Now I would like you to look, if you would, at exhibit No. 22, your personal financial diary. You have that in front of you?

Judge CLAIBORNE. No; I don't.

Mr. GOODMAN. Would you refer the honorable committee to what page of your diary where it would be reflective that you had, in fact, received a cashier's check in the amount of $50,000?

Judge CLAIBORNE. The third item in the book. It is dated June 1977.

Mr. GOODMAN. That would be on the third page, is that right?

Judge CLAIBORNE. That is correct.

Mr. GOODMAN. Would you read to the committee exactly what your entry was?

Judge CLAIBORNE. "Drawed $50,000 TCD at the Pioneer Bank with cashier's check payable to me from First National Bank No. 128694, dated December 8, 1975, withdrawn from my account First National Bank the same day."

Mr. GOODMAN. Now did you make that entry on or about the date of June 6, 1977?

Judge CLAIBORNE. Yes.

Mr. GOODMAN. And are you able to trace the history of the cashier's check by making reference to your diary?

Judge CLAIBORNE. Yes. I brought it—I withdrew $50,000 from my account by way of cashier's check December 1975, and I bought a TCD with it on June 6, 1977.

Mr. GOODMAN. And where is that entry?

Judge CLAIBORNE. Pioneer.

Mr. GOODMAN. Where is the entry?

Judge CLAIBORNE. The bottom entry on page 3.

Mr. GOODMAN. All right, that is one that you read to us, right? That is the one that you read?

Judge CLAIBORNE. Yes.

Mr. GOODMAN. All right. Now, can you tell us when you either cashed or deposited the cashier's check?

When did you receive the cashier's check, Judge Claiborne?

Judge CLAIBORNE. December 8, 1975.

Mr. GOODMAN. All right. Now where is that in your book?

Judge CLAIBORNE. The bottom paragraph of page 3.

Mr. GOODMAN. So in other words, you received this check and you let it set there without getting any type of interest whatsoever, and then ultimately a year and a half later utilized it. Is that correct?

Judge CLAIBORNE. Yes, from December 8, 1975, to June 6, 1977.

Mr. GOODMAN. All right. Did you see anything unusual about cashing checks in a Las Vegas casino?

Judge CLAIBORNE. No.

Mr. GOODMAN. Why?

Judge CLAIBORNE. Because I didn't see anything unusual about it. I am in either the Horseshoe Club or the Golden Nugget casino every day. I have lunch at one or the other places, and I am there every day. So I, casinos are like banks in Las Vegas.

Mr. GOODMAN. So you didn't think that you were doing anything that was out of the ordinary as far as your day-to-day activity when you negotiated checks at the casino?

Judge CLAIBORNE. Not a thing in the world wrong with it.

Mr. GOODMAN. Now there has been reference to the newspaper articles which were extant at the time that you were writing your letter to Jay Wright on April 11, 1980.

I would like marked as an exhibit a compendium of newspaper articles

Mr. CHABRAJA. Mr. Chairman, may I interpose an objection, so I don't interrupt this examination at this time, so I don't stop his flow, if you permit me.

I think that newspaper articles are the rankest sort of hearsay, typically not admissible in any proceeding. The man has already testified about the events of that day. I don't think he ought to try and shore up his testimony with newspaper articles.

Mr. GOODMAN. Well, I would submit that they are relevant and pertinent as to Judge Claiborne's state of mind.

Mr. CHABRAJA. Relevancy and pertinency is not the objection. Rank hearsay is the objection.

Mr. GOODMAN. They are not being offered for the truth of the matter asserted. They go to a state of mind. That is what the exception to the hearsay rule is.

Mr. CHABRAJA. Newspapers don't satisfy that exception of the hearsay evidence rule. His testimony was permitted; the newspapers shouldn't be.

Mr. GOODMAN. I would submit that the rule 803 of the Federal Rules of Criminal Procedure would admit this as an exception to the hearsay rule under the state-of-mind exception. It is not being offered for the truth of the matter asserted, Mr. Chairman.

The CHAIRMAN. Is it your intention, Mr. Goodman, to ask Judge Claiborne whether he had read these articles?

Mr. GOODMAN. Yes.

The CHAIRMAN. And that he was familiar with them?

Mr. GOODMAN. Yes; at or about the time that the article was published.

The CHAIRMAN. Well, for the limited purpose that you have stated, we will admit them.

Mr. GOODMAN. Thank you.

[Whereupon, Claiborne exhibit No. 28 was marked for identification and received in evidence.]

Mr. GOODMAN. Judge, what number has that been assigned?

Judge CLAIBORNE. 28.

Mr. GOODMAN. All right. I am asking you to look at exhibit No. 28, and ask whether you are able to recognize these particular articles?

Judge CLAIBORNE. Yes; I do.

Mr. GOODMAN. And are these the articles that you were aware of at or about April 11, 1980?

Judge CLAIBORNE. I would say yes.

Mr. GOODMAN. Did you read these articles in the newspaper?

Judge CLAIBORNE. Yes, I read them.

Mr. GOODMAN. Did you see the commentary which was attributed to you?

Judge CLAIBORNE. Yes.

Mr. GOODMAN. At this time I would offer exhibit No. 28 if it has not already been accepted into evidence.

Judge Claiborne, I would like to clarify an area of questioning concerning your attitude toward the strike force and their conduct in the Las Vegas community.

The CHAIRMAN. Mr. Goodman, I don't want to restrict you unnecessarily, but we have a considerable amount of testimony from the judge as to his state of mind and as to his attitude toward the strike force. I would just ask you to bear that in mind.

Mr. GOODMAN. Did you have any objection to the U.S. attorney performing his function in Nevada in order to control crime and criminal activity?

Judge CLAIBORNE. I never had any quarrels whatsoever with the U.S. attorney or any of his employees and attorneys practicing in my court.

Mr. GOODMAN. You were asked whether or not you were offered an opportunity to appear before the Federal grand jury which was investigating your matter, and you indicated that you declined. Would you tell the committee why you declined?

Judge CLAIBORNE. I declined on the advice of counsel because of leaks that had been coming out of the grand jury room as to all of its proceedings.

Mr. GOODMAN. Are you familiar with committee's exhibit 6? This document?

Judge CLAIBORNE. Oh, yes.

Mr. GOODMAN. Would you show the judge?

Judge CLAIBORNE. I prepared that.

Mr. GOODMAN. How many pages does committee's exhibit 6 contain?

Judge CLAIBORNE. Three pages.

Mr. GOODMAN. Three pages on yellow sheets of paper?

Judge CLAIBORNE. That is correct.

Mr. GOODMAN. Did you provide these to anybody?

Judge CLAIBORNE. I obviously did, indirectly provided it.

Mr. GOODMAN. To whom?

Judge CLAIBORNE. To Mr. Watson.

Mr. GOODMAN. All right. Now I am going to ask you to look at the third page. It contains certain figures, does it not?

Judge CLAIBORNE. Yes, it does.

Mr. GOODMAN. Those are the figures commencing with $7,451.19. Are you able to tell the committee from where you got that figure, and what it represents?

Judge CLAIBORNE. Well, I think I took that figure from the bank statement, and that is a check that I received from James Brown.

Mr. GOODMAN. All right. The figure $37,500, where did you get that from?

Judge CLAIBORNE. That is the check from Wyman estate that I cashed.

Mr. GOODMAN. And the figure 42,000, looks like $452?

Judge CLAIBORNE. That was a check that I received from Peter Echeverria.

Mr. GOODMAN. What case was that? Was that the Van Sickle case?

Judge CLAIBORNE. That is Van Sickle. It was deposited on January 4.

Mr. GOODMAN. All right. Are those entries consistent with the moneys which you received from your private practice, as earned as a private attorney, in the year 1980?

Judge CLAIBORNE. Yes.

Mr. GOODMAN. And that was provided to Mr. Watson at the time you gave him these various sheets of paper and financial records?

Judge CLAIBORNE. That is correct.

Mr. GOODMAN. Now I would like to ask you briefly about the process which is utilized when you write an opinion when sitting as a judge in a particular case.

Do you do it all by yourself, or do you rely on others?

Judge CLAIBORNE. No, of course not. I mean, you rely on your law clerks.

Mr. GOODMAN. Now what do they do for you?

Judge CLAIBORNE. They research the case and give you a memorandum of their conclusions and findings as a result.

Mr. GOODMAN. They prepare written memoranda for you?

Judge CLAIBORNE. Oh, yes.

Mr. GOODMAN. And you utilize them in the final construction and composition of the opinion?

Judge CLAIBORNE. Oh, yes. You take their written product, and most times you have a session with the clerk involved where you discuss it orally with him, and many times you do not agree.

Mr. GOODMAN. All right. I would like to direct your attention to the question of the rehearing en banc in the Ninth Circuit Court of Appeals.

Are you able to tell just from the fact that there were three written dissents that there were only three persons on the court who disagreed with the granting of the rehearing en banc?

Judge CLAIBORNE. No.

Mr. GOODMAN. What do the three written dissents indicate?

Judge CLAIBORNE. Well, it means that three judges, at least three judges wanted to put their protest that they didn't give me a rehearing in writing.

Mr. GOODMAN. All right. Now are you able to recall when the written dissents were filed?

Judge CLAIBORNE. No, I do not know that.

Mr. GOODMAN. Were they filed at some time substantially distant from the time that you were notified that the rehearing en banc was denied?

Judge CLAIBORNE. Yes. We received a phone call, as I recall, that the petition en banc had been denied, and I think it was some month later, about a month later we received the first dissenting opinion.

Mr. GOODMAN. Are you able to tell the committee how many judges out of—let's assume there are 19 judges who haven't recused themselves, who are willing to consider the issue of a petition for rehearing en banc, as to how many judges it would take for the granting of a rehearing en banc?

Judge CLAIBORNE. Well, it would take nine.

Mr. Goodman. It would take nine?

Judge Claiborne. Yes. It would take a majority.

Mr. Goodman. So that would be 10 out of 19?

Judge Claiborne. Yes, 10. Right.

Mr. Goodman. And we do know that three wrote dissents, is that correct?

Judge Claiborne. That is correct.

Mr. Goodman. I would like to ask you the ultimate question, the penultimate question. At the time that you were engaging in the activity for which you were indicted, the signing of these returns, did you act with any bad purpose?

Judge Claiborne. No.

Mr. Goodman. Did you act with any intent to defraud?

Judge Claiborne. Of course not.

Mr. Goodman. Now you have been in the legal business how long?

Judge Claiborne. Since 1946.

Mr. Goodman. You are familiar with the rigors of now being a defendant in not only criminal trials, but, in essence, a trial for impeachment. Is that right?

Judge Claiborne. That is correct.

Mr. Goodman. You understand that you have been subjected to cross-examination time and time again, right?

Judge Claiborne. That is true.

Mr. Goodman. Nothing pleasant about it?

Judge Claiborne. No.

Mr. Goodman. You have been, in many ways, subject to ignominy and scorn and public criticism as a result of your position to contest this impeachment, have you not?

Judge Claiborne. Oh, yes. I received many letters in prison, while I was in prison, castigating me for my position.

Mr. Goodman. Now I want you to, if you would, look at this committee and tell them why you have taken the position that you have, to contest the impeachment, fight the charges, and to continue with your position that you haven't deviated from since the first day. Tell them why.

Judge Claiborne. My position has been, my feeling has always been that they went after me and that they—that I am a victim of selective prosecution. Their ambitions at that time from me come from several motives, all combined with one purpose, and that purpose was to drive me from the bench. I don't think I am paranoid in that.

When I came away from the courtroom I knew I had been convicted wrongfully. In my heart I knew I had not committed any violation of any laws of the United States. I began to fight to once again restore my reputation and my good name, and I appealed to every court until I ran out of remedies, and I went to prison, a place I figured I would never be.

I had tried in the district court every way that I could to get the court to hear, just hear, what my Government, through its agents, had done to me in the process; and the trial judge turned a deaf ear. Nobody heard it.

I appealed to the circuit court of appeals, complaining that the lower court did not hear me, and the district court was affirmed. I appealed by certiorari to the Supreme Court of the United States, and they denied certiorari.

I was hopeful that somewhere along the line that somebody would stand up and say, we want to hear what happened to this man. We want to hear.

I had to make a very deliberate and hard decision as to whether to resign or be impeached. Everybody that I knew was clamoring for me to resign. Those that love me the most, urging me to.

I said I have done nothing wrong. I have done nothing wrong. To resign, admits to me that I have, and I will not do it. I told my best friends, some of my best friends, I said, I have been stripped of my freedom, I have been stripped of my reputation, I have been stripped of my good name and my honor.

Now I have three grandchildren, one of which is very close to me. I have to leave the heritage to my grandchildren, and they have stripped everything that I could leave them from me but courage.

Maybe, after all, the best heritage that I could leave my grandchildren is the heritage of courage and guts, so at least they can say years from now, at least old grandpa had guts.

That is why I am here. I am continuing to fight wherever anybody will hear me. And some day, in all my heart, I will prevail. It may be after I serve my sentence in the penitentiary, and it may be years from now, but some day I will prevail, as developments every day happen in my favor like the woman's affidavit.

Every day something happens of a tiny significant way that adds to proof that I was wrongfully convicted, and some day we will get it all. When that day comes I just hope I have a judge that is just as fair to me as I have been to every defendant that has ever been in my court. Then I will prevail.

That is why.

Mr. GOODMAN. Thank you.

The CHAIRMAN. Mr. Chabraja.

Mr. CHABRAJA. Mr. Chairman, as a preliminary matter to shorten the examination, and I intend to be very brief, the committee has asked for income tax return for the year 1982, and I don't intend to examine with respect to that, but Senator Gore had questions about the amount of fee paid to the tax preparer, Mr. Watson, for the years 1981 and 1982. I have similar questions.

Rather than belabor the record, I would be pleased if the Chair would request that information together with the supporting photocopy of a check from Mr. Goodman and Judge Claiborne and have it submitted after these hearings close.

The CHAIRMAN. Can you provide such information, Mr. Goodman?

Mr. GOODMAN. Whatever you ask for, we will provide it.

The CHAIRMAN. We will make that request since it has now been asked for twice.

Mr. CHABRAJA. Thank you.

RECROSS-EXAMINATION

Mr. Chabraja. Judge Claiborne, just to set something straight that I read about in the earlier trial, and you haven't been asked here, you are not a gambler?

Judge Claiborne. No, sir.

Mr. Chabraja. When you go into a casino, you strictly stay away from the tables?

Judge Claiborne. Never gamble.

Mr. Chabraja. We discussed that 8 out of the 14 fee checks in 1979 were cashed rather than deposited. Did you tell Jay Wright that you had cashed 8 out of 14 of your legal fee checks?

Judge Claiborne. No; I just told him the amount of money that I had received.

Mr. Chabraja. Similarly, did you tell Mr. Watson about the check that you had cashed in the casino?

Judge Claiborne. No; I gave him the same total figure that I had received.

Mr. Chabraja. We were discussing a subject, it seems to me, a few days ago of debriefing witnesses after they come out of a grand jury proceeding, and that is not an unusual practice for either the Government or private litigants, is it?

Judge Claiborne. No; it is a good trial tactic.

Mr. Chabraja. OK. And in that connection you had described debriefing Mr. Watson on at least two occasions, once when he was up in Portland and once when he came back, in Reno, do you recall that?

Judge Claiborne. Yes.

Mr. Chabraja. OK. Did you recall when your former office associate, James Brown—is it Jim? Is that his first name—James?

Judge Claiborne. Yes. James Brown.

Mr. Chabraja. Do you recall when he was subpoenaed to appear up in front of the Portland grand jury?

Judge Claiborne. No; I do not.

Mr. Chabraja. You didn't visit with him about the subpoena duces tecum that was served on him having to do with the Portland grand jury?

Judge Claiborne. No, I don't think so.

Mr. Chabraja. Did you ever debrief him at all?

Judge Claiborne. No, sir. I don't think I ever talked to him.

Mr. Chabraja. You never learned that he had in any way appeared or responded to a subpoena duces tecum?

Judge Claiborne. Yes. I know he responded. I know that he—yes, he told me that he had taken to the grand jury all checks that he had sent me.

Mr. Chabraja. Having to do with your legal fees?

Judge Claiborne. That is right, yes. He told me that.

Mr. Chabraja. Do you recall when it was that he told you that?

Judge Claiborne. It was after he had appeared before the Portland grand jury. A good long time afterward.

Mr. Chabraja. A good long time afterward?

Judge Claiborne. I think, I am not sure. I don't really know.

Mr. Chabraja. Well, let me tell you what I am driving at. Did you file the amended 1979 tax return after you had learned that

Mr. Brown had responded to the subpoena duces tecum before the Portland grand jury?

Judge CLAIBORNE. The 1979 amended return?

Mr. CHABRAJA. Yes.

Judge CLAIBORNE. I don't know when Mr. Brown went over. I don't know when he was before the grand jury.

If you could tell me, maybe that would help me.

Mr. CHABRAJA. My recollection is that the grand jury was subpoenaing witnesses and they were appearing in late 1982, early 1983, I think.

Judge CLAIBORNE. I don't know when Mr. Brown appeared over there, so I really couldn't answer your question. I just don't know.

Mr. CHABRAJA. You can't juxtapose those events, whether you learned of Mr. Brown's appearance before you filed the amended return or after?

Judge CLAIBORNE. No; I have no idea.

Mr. CHABRAJA. OK.

Judge CLAIBORNE. I don't have any idea. I know the amended 1979 return, I believe, was filed in March 1983, was it not?

Mr. CHABRAJA. Yes.

Judge CLAIBORNE. And I would just guess that—no. I started to say the Portland grand jury was over. I couldn't say that, I don't know.

Mr. CHABRAJA. OK. So we don't know.

I want to refer to committee exhibit 6, which you testified about a little earlier.

As you indicated, the last page of this exhibit contains a recapitulation of your legal fees for the year 1980, and you derived those from these deposits that you itemized on pages 1 and 2, is that——

Judge CLAIBORNE. No.

Mr. CHABRAJA. No?

Judge CLAIBORNE. No, that's not true. Some of them there.

Mr. CHABRAJA. Well, one of them was a cash item.

Judge CLAIBORNE. Yeah, one of them was a cash item that——

Mr. CHABRAJA. That you remembered?

Judge CLAIBORNE. I remembered. The other two I——

Mr. CHABRAJA. The other three came off of this sheet?

Judge CLAIBORNE. Off of the deposits.

Mr. CHABRAJA. Why weren't you using your diary to put those together?

Judge CLAIBORNE. I used—in doing it, I did both.

Mr. CHABRAJA. You did both?

Judge CLAIBORNE. But not on that document. I did both. I had worksheets where I did both. But on that one, I had run my check.

Frankly, I don't know what I was starting out to do with that except just check off, I think, items that I did not have in all probability in my book. I'm not sure of that even.

Mr. CHABRAJA. So you weren't working with your diary at the time you were preparing this?

Judge CLAIBORNE. I don't think so because the reason I don't think so, because I don't recall the amount being the same. But I——

Mr. CHABRAJA. There are some slight variances.

Judge **Claiborne**. Yeah I don't think I did.

Mr. **Chabraja**. Now, you've just testified on redirect examination that you provided this document to Mr. Watson.

Judge **Claiborne**. I said indirectly. I never directly took it into him, and I did not intend for that document to be in the file of papers that I took him.

Mr. **Chabraja**. And, as a matter of fact, you don't know that it was in the pile, do you?

Judge **Claiborne**. No, I don't. I frankly don't.

Mr. **Chabraja**. And the only way you know that you provided it to Mr. Watson is an assumption you made based on the fact that it came out of his brief case yesterday.

Judge **Claiborne**. That's right. You're absolutely right.

Mr. **Chabraja**. Now, you also talked about your law clerks preparing detailed research memoranda and draft opinions for you in the ordinary course of business while you were sitting judge.

I take it that you've never signed or published an opinion until you were absolutely sure that it's correct?

Judge **Claiborne**. I don't think that takes any great deal of mental energy. I mean you always dictate it and it is typed and then you check it.

Mr. **Chabraja**. And when you check it, you understand the concepts where you asked for research?

Judge **Claiborne**. Oh, yes, you check it for errors.

Mr. **Chabraja**. OK.

Judge **Claiborne**. And you're——

Mr. **Chabraja**. And you don't want to convey the impression to the committee that you relied on law clerks with respect to tax opinions and that——

Judge **Claiborne**. Oh, no.

Mr. **Chabraja** [continuing]. You didn't understand the concepts when you signed it?

Judge **Claiborne**. No. You use them as aides and assistants, and they are a tremendous aide. But it's your responsibility to make a final decision and you do it.

Mr. **Chabraja**. OK. One last series of questions, Judge.

With respect to schedule D on the 1981 income tax return, the first one that Jerry Watson had done, I think you indicated in your—when you were subject to cross examination by me, that you didn't notice at the time you signed the return that legal fee income hadn't been listed as a separate item, and that there wasn't a schedule C, for example. You didn't discern that when you just thumbed through your return, is that——

Judge **Claiborne**. I knew that it contained a schedule D. But I don't have any impression that—are you talking about the second—the visit to my office where he brought the copy?

Mr. **Chabraja**. Yeah. I was going to track you through one by one very briefly. I think the point I was trying to make was when you signed it, when you just thumbed through it in his office, you didn't notice the absence of the schedule C or the absence——

Judge **Claiborne**. I never noticed the absence of the schedule C at all.

Mr. **Chabraja**. And you didn't focus in on that and really focus on the existence of schedule D until he visited you 3 days later?

Judge CLAIBORNE. That squares with my recollection.

Mr. CHABRAJA. OK. And it was at that point you noticed that legal fees weren't separately reported as income on the return?

Judge CLAIBORNE. I'm sure I became aware that they were treated in a manner differently than they had ever been treated.

Mr. CHABRAJA. OK. So you had some understanding that they were being treated on schedule D at that point in time.

Did it surprise you that, after reporting legal fees as ordinary income for 30 years, that in this year you were reporting zero legal fees in the year in which you absolutely knew that you had close to $90,000 in legal fees? Did that surprise you when you saw that return?

Judge CLAIBORNE. Well, no, it did not surprise me because I mean he had mentioned that he had recaptured the legal fees, so that really didn't surprise me.

Mr. CHABRAJA. Didn't surprise you because he had told you the way he had treated those legal fees?

Judge CLAIBORNE. Well, he didn't explain it to me in detail. He said that I recaptured your legal fees. That's what he said.

Mr. CHABRAJA. And did what he said to you make sense to you?

Judge CLAIBORNE. I would have to admit that I really didn't know what he was talking about.

Mr. CHABRAJA. OK. You didn't know what he was talking about then.

Judge CLAIBORNE. Except I knew and I understood and could tell what the final result was.

Mr. CHABRAJA. Did it seem logical to you what he was telling you?

Judge CLAIBORNE. Yes.

Mr. CHABRAJA. Even though you didn't really understand it, it seemed logical to you?

Judge CLAIBORNE. What he said seemed logical. I mean he premised it on the basis of that I was able to take your losses when you closed your business—your business losses is what he said. That's rather easy to understand.

Mr. CHABRAJA. Did you question him about it in any way to make absolutely sure?

Judge CLAIBORNE. No, I did not.

Mr. CHABRAJA. Judge, let me read you from the first trial, page 3278, beginning at line 3 and ending through line 19, and I ask you if you gave—were asked these questions and gave these answers under oath.

> *Question.* Didn't it surprise you that after reporting legal fees as ordinary income for 30 years that, all of a sudden, you are reporting zero legal fees in a year in which you know you have massive legal fees coming in?
>
> Answer. No, it did not surprise me. When I discussed it with him, it didn't surprise me at all. I mean what he said, the way he treated those legal fees made sense to me.
>
> *Question.* All right.
>
> Answer. It was logical to me and it still is.
>
> *Question.* Did you question him about it to make absolutely sure.
>
> Answer. What do you mean did I question him about it to make absolutely sure?
>
> *Question.* That's right.
>
> Answer. I couldn't have got the information how he treated this if I hadn't questioned him. I surely questioned him.

Do you remember those questions and those answers?

Judge CLAIBORNE. Yeah.

Mr. CHABRAJA. Mr. Chairman, I have no further inquiry at this time.

The CHAIRMAN. Thank you, Mr. Chabraja.

I'm going to ask the committee to retire in a minute so that we can consider the motion originally made to extend the scope of this hearing.

Before I do, let me make a few announcements so that the counsel can consider these questions, and if you have further inquiries when we come back, we will be glad to attempt to answer your questions.

But as we reach the end of these committee proceedings, we approach the beginning of the proceedings which will take place in the Senate. And it might be helpful if I commented very briefly on two aspects of that.

First, each party will be expected to file simultaneously written briefs no later than 1 week from today, at the close of business on Tuesday, September 30.

Now, the record of these proceedings is in the process of being printed at the Government Printing Office, and we are informed that the printing will be completed by Monday, September 29. It's my understanding that the parties have been receiving daily transcripts and so they can begin to prepare their briefs from them. And if you get the printed record on the 29th, you'll be able then to insert the pagination, make references to specific pages which I think will be helpful.

Now, all Senators, all members of the Senate who are necessarily involved in this process will benefit from the parties' very careful analysis of the record so that attention of Senators can be brought to the portions of the record which the parties believe to be the most pertinent and the most significant. We would also benefit from briefs which carefully develop the legal principles which are applicable to these proceedings. These should include a description of the standard of willfulness as applied to criminal prosecutions under the Internal Revenue Code.

Members have also expressed an interest in the legal standards which govern the particular tax issues involved in this proceeding, such as the standards which govern the reporting of a capital transaction. Beyond these particular tax issues, however, we would benefit from the understanding of the parties of the constitutional test which we should apply under the impeachment power in determining whether the impeached officer has committed a high crime or misdemeanor.

Now, by way of illustration, let me pose this hypothetical question: may the Senate convict if it determines that the impeached officer has exhibited a reckless disregard or gross indifference to a fundamental legal responsibility even if his conduct was not willful within the particular definitions of the Internal Revenue Code?

Now, I am unable to announce today the date on which floor proceedings will begin. In fact, given the nature of the Senate's schedule, I think it would be impossible for anyone to predict that at this moment. But I think it is fair notice to the parties to say that they should be prepared to go forward within a day or two after the filing of the briefs on September 30. Whether it will in fact come forward that quickly, I cannot assure you. But I think you should be prepared at that time.

One of the first orders of business will be to determine whether the Senate will hear any witnesses. The parties should promptly advise counsel whether they will be filing motions with the Senate, requesting that the Senate hear witnesses, and naturally identifying those witnesses. The Senate will also need to dispose of the pending motions that this committee has referred because they presented questions that we were not authorized to resolve.

Now, we will stand in recess briefly while the committee retires to discuss the previous ruling.

[The committee recessed to executive session.]

[The committee reconvened in open session.]

The CHAIRMAN. The committee will come to order.

The committee has conferred at some length and in some detail over the question of whether or not the ruling of the Chair with respect to expanding the scope of this hearing should be permitted. It has been determined that we will not alter the ruling of the Chair. The ruling of the Chair will stand as previously stated. The scope of the hearing therefore is limited to the areas that have already been covered.

We had also before us an open question, the suggestion by Senator Heflin that we might engage the services of an expert to deal with the legal principles that would be applied to these tax returns in making prosecutorial decisions. We will not go into that matter at this time, although every member of the Senate is going to be obviously interested in that subject, and our report will make it clear that this is a subject which Senators' attention will be called to. And I'm sure that the parties will touch on that question in their briefs.

At this time, we will excuse all witnesses who have been subpoenaed.

Is there anything that any member of the committee wishes to add?

Senator RUDMAN. Just thank the Chair for the Chair's leadership and courtesy during these hearings.

The CHAIRMAN. Well, we thank——

Senator GORE. Mr. Chairman, I have a question on the excusing of the witnesses.

In the event that the full Senate wished to hear a particular witness, wouldn't we need to advise witnesses now being excused from the proceedings of this committee that they remain subject to the subpoena issued to them should the full Senate desire their attendance?

The CHAIRMAN. They are, of course, subject to the call of the Senate.

Mr. GOODMAN. Mr. Chairman.

The CHAIRMAN. Mr. Goodman.

Mr. GOODMAN. Thank you, sir.

Senator WARNER. Mr. Chairman, I'd like to associate myself with Judge Heflin in his request.

The CHAIRMAN. The record will so reflect.

Mr. **Goodman**. Mr. Chairman, I'm concerned about the time schedule that we've been ordered to follow in the sense that we from Nevada will be losing 2 days in the process.

I ask the Chair whether there's any possibility to expand an additional 2 days or to permit us to prepare the documents——

The **Chairman**. Two days for the filing of the brief?

Mr. **Goodman**. Yes, an additional 2 days, or to permit us to be able to mail it and have the mailing date remain the same.

See, the problem that we have is when we come back here, as we did last week, we actually lost 2 days. We had to hire a private service to type our brief because we didn't have the time, once we left here, on the preliminary motions to go back and do our research and then get back here.

The **Chairman**. I will ask the staff to work with you with respect to expeditious delivery. I believe we need to try to meet that deadline of September 30 if it is at all possible. Because we are under some constraints here. So if you can have your brief filed by the 30th of September, using one of the express services or however you choose to do it, but let me suggest that you confer with counsel and work out those arrangements.

Mr. **Goodman**. Then the two other brief matters, because I am utilizing the services of Mr. Chesnoff and Mr. Stuhff, and the courts sometimes are insensitive to commitments and obligations, if you would at this time order that they are protected during the pendency of these proceedings from any court proceedings so they can devote their full time to these Senate matters, it would be greatly appreciated.

The **Chairman**. Well, Mr. Goodman, your estimate of the powers of the Chair exceed what I believe the realities may be. But to the extent that there's any representation that I can make to the courts which will be helpful to them, I will be happy to do it.

Mr. **Goodman**. We appreciate that.

And then the third and last matter is that the Jewish holidays are coming up, and I would like it known that I will not work on the high holiday. I think it's Friday a week, and that should be taken into consideration by the committee.

The **Chairman**. Mr. Goodman, the Senate is very scrupulous in observing religious holidays, and I'm sure will not be working on the high holidays either.

Mr. **Goodman**. Very good.

The **Chairman**. So I don't think that you need to have any concern on that.

Mr. **Goodman**. Thank you very much.

Senator **Pressler**. Mr. Chairman, I would just like to join Senator Warner in being identified with the Heflin motion and the broader scope motion in the record.

The **Chairman**. It will be reflected, Senator Pressler.

If there's nothing further——

Mr. **Chabraja**. Housekeeping. At the close of the House's case, I would, together with the Chair, identify those exhibits that at least I thought the House had put into evidence, and we've added some since then. And I think everybody is pretty secure about what the House has done.

I really don't know what exhibits Mr. Goodman has in fact offered. There have been a number marked and some moved and some accepted. I'd appreciate it, and I think everybody would be better served if we could have that recapitulation right now before we leave.

The CHAIRMAN. Mr. Goodman, we are faced with a rollcall vote in the Senate. If you will confer with the clerk at this time, I don't think we need to call back all the members, but I will return immediately and adjourn the hearing after you've had an opportunity to confer with the clerk.

Mr. GOODMAN. Thank you.

[Recess.]

The CHAIRMAN. The committee will come to order.

Mr. Goodman and Mr. Chabraja, have you examined the exhibits for Judge Claiborne?

Mr. GOODMAN. We have, Mr. Chairman.

The CHAIRMAN. And are you in agreement?

Mr. GOODMAN. The only issue is as to exhibits 22 and 27. Those are the two orders from the Nevada Supreme Court, Mr. Chairman, which I believed had been admitted earlier. If not, we would move their admission at this time under the public document exception to the hearsay rule.

The CHAIRMAN. Do you have any objection, Mr. Chabraja?

Mr. CHABRAJA. Yes; I think they are irrelevant and immaterial to these proceedings, what action another body may have taken with respect to licensure of Judge Claiborne.

If the Chair decides otherwise, I will have a document to offer on the same subject matter.

The CHAIRMAN. It would be my disposition to admit them for whatever probative value they have, which will appear on their face. And so I will now admit them.

Mr. GOODMAN. Thank you.

[Whereupon, Claiborne exhibits Nos. 22 and 27 were received in evidence.]

Mr. CHABRAJA. And let me, Mr. Chairman, identify as House exhibit 44, I believe is next in order, a letter dated August 19, 1986, from Marvin Schwartz, secretary, the American College of Trial Lawyers, addressed to the Honorable Harry E. Claiborne, Maxwell Air Force Base. It reads as follows:

> Dear Mr. Claiborne: Pursuant to the By-Laws of the American College of Trial Lawyers, Article 3, Section 3.5, subparagraph f(4), the Board of Regents has voted to expel you from membership in the College. This letter serves as official notice of such expulsion. As we are forced to drop you from our rolls, your certificate of membership, which is the property of the College, should be returned to this office. In consideration of the above it will be necessary to discontinue listing yourself as a Fellow of the American College of Trial Lawyers in any professional directory. Your cooperation will be appreciated. Yours truly.

The CHAIRMAN. Do you have an objection?

Mr. GOODMAN. Yes, certainly we do, Mr. Chairman. First of all, it is not a public document. It is hearsay.

Mr. CHABRAJA. It is directed to the judge.

Mr. GOODMAN. It is hearsay. The relevance has nothing to do at all with these proceedings. It does not go to the issue of whether or not the judge received due process, as does the inquiry by the

Nevada Supreme Court. It is a private organization. Apparently it refers to certain by-laws which we have not had an opportunity to examine. And furthermore, the fact that it is being offered at this late date, outside the presence of the rest of the committee, not subject to examination or cross examination by myself or the committee members, I would submit that it is a fugitive document and should not be received at this point in time.

The CHAIRMAN. Do you have any question as to the authenticity of the letter that has been offered?

Mr. CHABRAJA. Absolutely not.

The CHAIRMAN. Do you, Mr. Goodman?

Mr. GOODMAN. As far as the authenticity, I can't even make a representation. It is a xerox copy. I am not even familiar with that particular organization, to my knowledge. I don't know who Marvin Schwartz is.

But my basic objection is that I have been deprived of the opportunity to make a record on this with Judge Claiborne on the witness stand, and examine him as to what his status was. For all I know, article 3, section 3.5, paragraph f(4) of this particular organization may—they may be expelling him because he is a Federal judge.

Mr. CHABRAJA. It goes to the question of disrepute. This document was received by Chairman Rodino from the executive secretary of the American College of Trial Lawyers. It goes to article 3 and article 4.

And I learned something today. I had never heard the concept of fugitive document before; I was glad to hear that one.

But this is, in many respects, itself an authenticating document. I am very confident that it was sent to Judge Claiborne. I didn't think it fell within the scope of the proceeding until Mr. Goodman advanced 22 and 27, which go to the same kinds of issues, what some other deliberative body did with respect to Judge Claiborne's status before them.

If we admit one, we should admit the other.

Mr. GOODMAN. But they are being offered for different purposes.

The CHAIRMAN. Well, I must say, Mr. Chabraja, I am somewhat concerned by the fact that unlike the Nevada court orders this is the first time it has been mentioned in this proceeding, and there has been no prior discussion of it. We also are dealing with a xerox copy which is not clearly authenticated, although certainly I have no reason to doubt its authenticity, nor has that question seriously been raised.

I would suggest that you get an authenticated copy and present that to the Senate at the time that the case——

Mr. CHABRAJA. I will present a certified copy.

The CHAIRMAN. And let it be ruled on at that time.

Yes, Mr. Goodman?

Mr. GOODMAN. Sorry, I took something for granted which I should not have. There was no objection to the admission of respondent's 1, 10, and 11 and we would therefore move the same.

The CHAIRMAN. I am just about to put that to you.

Mr. Chabraja, I understand that there is no objection to 1, 10, and 11—Claiborne exhibits 1, 10 and 11?

Mr. CHABRAJA. Absolutely true, Mr. Chairman.

The **Chairman**. Then they are admitted.

[Whereupon, Claiborne exhibits Nos. 1, 10, and 11 were received in evidence.]

The **Chairman**. And I understand, by the same token, that the committee exhibits 5, 6, 7, and 8 are agreeable; is that correct, Mr. Chabraja?

Mr. **Chabraja**. Absolutely.

The **Chairman**. Mr. Goodman?

Mr. **Goodman**. Yes, sir.

The **Chairman**. Then they will be admitted.

[Whereupon, committee exhibits Nos. 5, 6, 7, and 8 were received in evidence.]

The **Chairman**. There being no further business to come before the committee, the committee stands adjourned sine die.

[Whereupon, at 6:55 p.m., the committee was adjourned sine die.]

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